



## LODI CITY COUNCIL

Carnegie Forum  
305 West Pine Street, Lodi

## AGENDA – REGULAR MEETING

Date: June 6, 2012

Time: Closed Session 6:00 p.m.  
Regular Meeting 7:00 p.m.

For information regarding this Agenda please contact:

**Randi Johl, City Clerk**  
**Telephone: (209) 333-6702**

**6:55 p.m. Invocation/Call to Civic Responsibility.** Invocations/Calls may be offered by any of the various religious and non-religious organizations within and around the City of Lodi. These are voluntary offerings of private citizens, to and for the benefit of the Council. The views or beliefs expressed by the Speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the beliefs or views of any speaker.

***NOTE:** All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the City Clerk, located at 221 W. Pine Street, Lodi, and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the City Clerk's Office as soon as possible and at least 24 hours prior to the meeting date.*

### **C-1 Call to Order / Roll Call**

### **C-2 Announcement of Closed Session**

- a) Conference with Steve Schwabauer, City Attorney, and Dean Gualco, Human Resources Manager (Labor Negotiators), Regarding Unrepresented Executive Management, Lodi City Mid-Management Association, Unrepresented Confidential Employees, AFSCME General Services and Maintenance & Operators, International Brotherhood of Electrical Workers, Fire Mid-Managers, and Lodi Professional Firefighters Pursuant to Government Code §54957.6
- b) Conference with Steve Schwabauer, City Attorney (Labor Negotiator), Regarding Police Mid-Managers, Lodi Police Officers Association, and Lodi Police Dispatchers Association Pursuant to Government Code §54957.6

### **C-3 Adjourn to Closed Session**

**NOTE: THE FOLLOWING ITEMS WILL COMMENCE NO SOONER THAN 7:00 P.M.**

### **C-4 Return to Open Session / Disclosure of Action**

#### **A. Call to Order / Roll Call**

#### **B. Presentations**

- B-1 United States Army Week Proclamation

#### **C. Consent Calendar (Reading; Comments by the Public; Council Action)**

- C-1 Receive Register of Claims in the Amount of \$6,835,643.95 (FIN)

- C-2 Approve Minutes (CLK)

- a) May 15, 22, and 29, 2012 (Shirtsleeve Sessions)
- b) May 16, 2012 (Regular Meeting)
- c) May 22, 2012 (Special Joint Meeting w/Lodi Arts Commission)

- Res. C-3 Adopt Resolution Rejecting Non-Responsive Bids and Authorizing the City Manager to Execute Contract for Well 6R Granular Activated Carbon Treatment System with Conco West, Inc., of Manteca (\$667,500) (PW)

- Res. C-4 Adopt Resolution Authorizing the City Manager to Execute Contract for Grape Bowl Scoreboard Improvements with Gary's Signs, of Lodi (\$45,515), and Appropriating Funds (\$55,000) (PW)

- Res. C-5 Adopt Resolution Authorizing the City Manager to Execute Amendment No. 2 to Professional Services Agreement with R.F. MacDonald Company, of Modesto, for Boiler Cleaning and Inspection at White Slough Water Pollution Control Facility (\$11,050) (PW)
- Res. C-6 Adopt Resolution Authorizing the City Manager to Execute Lease Agreement with MetroPCS California for 114 North Main Street (PW)
- Res. C-7 Adopt Resolution Approving the Memorandum of Understanding Between the City of Lodi and the Boosters of Boys and Girls Sports (PRCS)
- Res. C-8 Adopt Resolution Authorizing the City Manager to Execute Agreement with California Emergency Management Agency Accepting the California Gang Reduction, Intervention, and Prevention Program Grant (\$250,000) Awarded to the City of Lodi Beginning January 1, 2012 and Ending December 31, 2013, and Appropriating \$10,000 (PD)
- Res. C-9 Adopt Resolution Authorizing the City Manager to Execute Agreement with County of San Joaquin for Automated Message Switching System and Criminal Justice Information System Access (\$21,420) (PD)
- Res. C-10 Adopt Resolution Authorizing the City Manager to Engage the Professional Services of Lamont Financial Services, Jones-Hall, Stone and Youngberg, LLC, and JP Morgan Related to Refinancing the 2002 General Fund Certificates of Participation (COPS), the 2003B CSCDA Wastewater COPS, and the 2004 Wastewater COPS (CM)
- Res. C-11 Adopt Resolution Approving the Single Member Services Agreement By and Between the City of Lodi and the Northern California Power Agency and Authorizing the City Manager to Execute Said Agreement (\$30,400) (EUD)
- Res. C-12 Adopt Resolution Authorizing the City Manager to Terminate the Professional Services Agreement with ZGlobal Engineering and Energy Solutions and Execute Professional Services Agreement with GP Strategies, of Amherst, New York, for Compliance Services (\$60,000) (EUD)
- Res. C-13 Adopt Resolution Authorizing the City Manager to Execute an Agreement for Consulting Services with Matt Foskett Consulting, LLC for Electric Utility Rates and Resources Services (\$120,000) (EUD)
- Res. C-14 Adopt Resolution Approving the First Amendment to the Lodi Energy Center Project Management and Operations Agreement and Authorizing Execution by the City Manager (EUD)
- Res. C-15 Adopt Resolution Rescinding Resolution No. 2012-51 Authorizing the City Manager to Terminate the Existing Letter of Agreement with Holz Rubber Company and Execute a Revised Letter of Agreement (\$58,000) (EUD)
- Res. C-16 Adopt Resolution Ratifying the San Joaquin Council of Governments' Annual Financial Plan for Fiscal Year 2012/13 (PW)
- Res. C-17 Adopt Resolution Approving the Appropriation of Funds for Oversight Costs Related to PCE/TCE Busy Bee Plume (\$30,000) (PW)
- C-18 Receive Report Regarding League of California Cities Communications Pertaining to Assembly Bill 2312 (CLK)
- C-19 Adopt the Following Resolutions Pertaining to the November 6, 2012, General Municipal Election: (CLK)
  - Res. a) Resolution Calling and Giving Notice of the General Municipal Election to Be Held on Tuesday, November 6, 2012, for the Election of Certain Officers of the City;
  - Res. b) Resolution Requesting the San Joaquin County Board of Supervisors to Render Specified Services for the Conduct of a General Municipal Election to Be Held on Tuesday, November 6, 2012;
  - Res. c) Resolution Setting Forth the Council's Policy Regarding Impartial Analyses, Arguments, and Rebuttal Arguments for Any Measure(s) that May Qualify to Be Placed on the Ballot for the November 6, 2012, General Municipal Election; and
  - Res. d) Resolution Adopting Regulations for Candidates for Elective Office Pertaining to Candidates' Statements Submitted to the Voters at the General Municipal Election to Be Held on Tuesday, November 6, 2012

**D. Comments by the Public on Non-Agenda Items**

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

**E. Comments by the City Council Members on Non-Agenda Items**

**F. Comments by the City Manager on Non-Agenda Items**

**G. Public Hearings – None**

**H. Communications**

H-1 Re-post for Vacancies on the Greater Lodi Area Youth Commission (CLK)

**I. Regular Calendar**

Res. I-1 Adopt Resolution Approving the City of Lodi Financial Plan and Budget for the Fiscal Year Beginning July 1, 2012 and Ending June 30, 2013, and Approving the Fiscal Year 2012/13 Appropriation Spending Limit (CM)

I-2 Authorize Request for Use of City Letterhead Pursuant to City Council Protocol Manual Section 7.4 and Government Code Section 82015 (CLK)

**J. Ordinances**

Ord. J-1 Adopt Ordinance No. 1859 Entitled, "An Ordinance of the Lodi City Council Amending Lodi  
(Adopt) Municipal Code Chapter 10.12 – Enforcement and Obedience to Traffic Regulations – by Repealing and Re-Enacting Section 10.12.020, 'Required Obedience to Traffic Regulations,' in Its Entirety" (CLK)

**K. Adjournment**

Pursuant to Section 54954.2(a) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day.

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Randi Johl  
City Clerk



## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** United States Army Week Proclamation

**MEETING DATE:** June 6, 2012

**PREPARED BY:** City Clerk

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**RECOMMENDED ACTION:** Mayor Mounce present proclamation proclaiming the week of June 11 – 16, 2012, as “United States Army Week” in the City of Lodi.

**BACKGROUND INFORMATION:** The Mayor has been requested to present a proclamation proclaiming the week of June 11 – 16, 2012, as “United States Army Week” in the City of Lodi. Lodi Station Commander Staff Sgt. Amit Singh and Staff Sgt. Kenneth Rolle will be at the meeting to accept the proclamation.

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** None.

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Randi Johl  
City Clerk

RJ/JMR

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager





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## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Receive Register of Claims through May 17, 2012 in the Total Amount of \$6,835,643.95.

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Financial Services Manager

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**RECOMMENDED ACTION:** Receive the attached Register of Claims for \$6,835,643.95.

**BACKGROUND INFORMATION:** Attached is the Register of Claims in the amount of \$6,835,643.95 through 5/17/12. Also attached is Payroll in the amount of \$1,166,037.84.

**FISCAL IMPACT:** Not applicable.

**FUNDING AVAILABLE:** As per attached report.

\_\_\_\_\_  
Ruby R. Paiste, Financial Services Manager

RRP/rp

Attachments

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

Accounts Payable  
Council Report

Page - 1  
Date - 05/17/12  
Amount

As of Thursday	Fund	Name	Amount
05/17/12	00100	General Fund	1,135,890.02
	00120	Vehicle Replacement Fund	4,993.27
	00123	Info Systems Replacement Fund	7,013.60
	00160	Electric Utility Fund	2,405,685.99
	00161	Utility Outlay Reserve Fund	467.09-
	00164	Public Benefits Fund	135,865.22
	00166	Solar Surcharge Fund	14,000.00
	00170	Waste Water Utility Fund	71,307.61
	00171	Waste Wtr Util-Capital Outlay	1,140.69
	00172	Waste Water Capital Reserve	377.34
	00175	IMF Storm Facilities	980.00
	00180	Water Utility Fund	20,828.33
	00181	Water Utility-Capital Outlay	2,019,007.81
	00210	Library Fund	14,596.80
	00230	Asset Seizure Fund	795.73
	00234	Local Law Enforce Block Grant	6,094.23
	00235	LPD-Public Safety Prog AB 1913	61.19
	00260	Internal Service/Equip Maint	48,494.55
	00270	Employee Benefits	452,995.03
	00300	General Liabilities	2,848.77
	00310	Worker's Comp Insurance	197,850.88
	00320	Street Fund	1,458.00
	00321	Gas Tax-2105,2106,2107	10,834.32
	00325	Measure K Funds	6,056.25
	00331	Federal - Streets	69,054.26
	00340	Comm Dev Special Rev Fund	2,562.22
	00347	Parks, Rec & Cultural Services	54,566.72
	00444	HUD-Federal Sustainable Comm	2,772.75
	00459	H U D	2,077.52
	01211	Capital Outlay/General Fund	23,257.53
	01212	Parks & Rec Capital	5,395.63
	01250	Dial-a-Ride/Transportation	4,288.98
	01251	Transit Capital	33,236.90
	01410	Expendable Trust	73,037.84
Sum			6,828,958.89
	00184	Water PCE-TCE-Settlements	168.00
	00185	PCE/TCE Rate Abatement Fund	4,540.06
	00190	Central Plume	1,977.00
Sum			6,685.06
Total Sum			6,835,643.95

## Council Report for Payroll

Page - 1  
Date - 05/17/12

Payroll	Pay Per Date	Co	Name	Gross Pay
Regular	05/13/12	00100	General Fund	695,547.01
		00160	Electric Utility Fund	135,605.81
		00161	Utility Outlay Reserve Fund	7,151.59
		00164	Public Benefits Fund	3,783.78
		00170	Waste Water Utility Fund	98,567.97
		00180	Water Utility Fund	3,587.91
		00210	Library Fund	28,989.53
		00235	LPD-Public Safety Prog AB 1913	1,422.79
		00260	Internal Service/Equip Maint	15,146.59
		00321	Gas Tax-2105,2106,2107	31,143.84
		00340	Comm Dev Special Rev Fund	22,412.19
		00346	Recreation Fund	204.00
		00347	Parks, Rec & Cultural Services	115,081.47
		01250	Dial-a-Ride/Transportation	7,393.36
Pay Period Total:				
Sum				1,166,037.84



## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Approve Minutes  
a) May 15, 2012 (Shirtsleeve Session)  
b) May 16, 2012 (Regular Meeting)  
c) May 22, 2012 (Shirtsleeve Session)  
d) May 22, 2012 (Special Joint Meeting w/Lodi Arts Commission)  
e) May 29, 2012 (Shirtsleeve Session)

**MEETING DATE:** June 6, 2012

**PREPARED BY:** City Clerk

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**RECOMMENDED ACTION:** Approve the following minutes as prepared:  
a) May 15, 2012 (Shirtsleeve Session)  
b) May 16, 2012 (Regular Meeting)  
c) May 22, 2012 (Shirtsleeve Session)  
d) May 22, 2012 (Special Joint Meeting w/Lodi Arts Commission)  
e) May 29, 2012 (Shirtsleeve Session)

**BACKGROUND INFORMATION:** Attached are copies of the subject minutes marked Exhibit A through E, respectively.

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** None required.

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Randi Johl  
City Clerk

Attachments

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

**LODI CITY COUNCIL  
SHIRTSLEEVE SESSION  
CARNEGIE FORUM, 305 WEST PINE STREET  
TUESDAY, MAY 15, 2012**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, May 15, 2012, commencing at 7:00 a.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Katzakian, and Mayor Pro Tempore Nakanishi

Absent: Mayor Mounce

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 Third Quarter Fiscal Year 2011/12 Water, Wastewater, and Electric Utility Department Financial Reports (CM)

City Manager Bartlam provided a brief introduction to the subject matter of the third quarter utility financial reports update and the presentation regarding the Fiscal Year 2012/13 budget.

Deputy Public Works Director Larry Parlin provided a PowerPoint presentation regarding the water and wastewater quarterly update. Specific topics of discussion included the water and wastewater cash flow summary, operating results, cash balances, bad debt write off, and operational and regulatory accomplishments.

In response to Council Member Hansen, Deputy City Manager Jordan Ayers stated the work for others column includes the work for the Electric Utility Department for the Supervisory Control and Data Acquisition System that gets charged out at the end of the year.

In response to Council Member Hansen, Mr. Parlin stated the new permit will be good for five years and will renew for five-year periods thereafter.

In response to Mayor Pro Tempore Nakanishi, Mr. Ayers provided a brief overview of the history of the wastewater budget and discussed the rate structure, reserves, and rate stabilization.

Electric Utility Director Elizabeth Kirkley provided a PowerPoint presentation regarding the electric utility and specific topics of discussion included the electric fund cash flow summary, operating results, cash balances, power supply costs, power sales, Energy Cost Adjustment revenue, billing statistics, bad debt write off, general operating reserve at Northern California Power Agency (NCPA), open position, and utility accomplishments.

In response to Mayor Pro Tempore Nakanishi, Mr. Ayers confirmed that the 10% debt service, which has been consistent for the past few years, is related to past capital improvement projects and contract restructuring.

In response to Council Member Johnson, Ms. Kirkley stated the public benefits fund has been building up because there is a decrease in participation, staff is looking at doing a larger project to benefit all ratepayers, and the current number includes carry over from previous years.

In response to Mayor Pro Tempore Nakanishi, Mr. Bartlam stated public benefit funds could be used on a citywide street lighting project to replace the current lighting with higher efficiency

lighting.

In response to Mayor Pro Tempore Nakanishi, Mr. Bartlam stated the entire City does have lights with the exception of a neighborhood near Cabrillo Circle and they do not wish to have lights.

In response to Council Member Katzakian, Mr. Ayers provided an overview of the general operating reserve balance held at NCPA and its connection to the rating agencies and rate stabilization.

In response to Mayor Pro Tempore Nakanishi, Mr. Ayers confirmed that privately-owned utilities have similar rate structures as public-owned utilities have.

In response to Council Member Johnson, Mr. Bartlam stated the City is transferring money to NCPA from our public benefits fund instead of operations for power supply costs that are eligible for public benefit.

In response to Council Member Hansen, Ms. Kirkley stated the recommendation for open position is based on what the market is doing and could go as high as 10%.

In response to Council Member Johnson, Ms. Kirkley stated the City has not received complaints regarding meter reading as other communities have because the City does not utilize the Smart meter technology.

In response to Council Member Hansen, Ms. Kirkley stated staff has assessed its ability to protect against copper theft and is in the process of installing different material as a result to protect the City from copper theft at its facilities.

In response to Council Member Katzakian, Ms. Kirkley stated she does not anticipate costs going down significantly over the next few years based on market conditions and the biggest concern appears to be with the installation of solar systems.

In response to Council Member Katzakian, Mr. Bartlam stated the trend of the energy cost adjustment going down will likely continue.

In response to Mayor Pro Tempore Nakanishi, Mr. Bartlam stated natural gas prices may result in lower electric costs going into the future although in the present the utility continues to pay for the past purchases.

#### B-2 Receive Presentation Regarding Fiscal Year 2012/13 Budget (CM)

Deputy City Manager Jordan Ayers provided a PowerPoint presentation regarding the Fiscal Year 2012/13 budget. Specific topics of discussion included an overview of the utility funds, revenues, expenses, capital projects, and reserve amounts related to the electric, water, and wastewater funds.

In response to Council Members Hansen and Katzakian, Matt Foskett provided an overview of the timing and process associated with the sale of the renewable energy credits.

In response to Council Member Hansen, Mr. Bartlam stated the 230kV study done by PG&E is being taken off the books in its entirety.

In response to Council Member Hansen, Mr. Ayers stated the \$17 million is distributed roughly by keeping \$5 million locally and \$12 million at Northern California Power Agency.

In response to Council Member Hansen, Mr. Ayers stated the treatment plant is expected to be operational by the fall and a few of the seven total positions have already been hired or are in the process.

In response to Council Member Hansen, Mr. Ayers confirmed that the biosolids facility is operational and provided an overview of the \$8.6 million decrease due to previous projects that have been completed and are not budgeted for in the future.

In response to Council Member Hansen, Mr. Bartlam stated the remaining funds from the former bond sale were used for the biosolids project and the recommendation will be to use the small surplus to retire the remainder of the debt.

Discussion ensued amongst Council Member Hansen, Mr. Bartlam, and Mr. Ayers regarding the wastewater reserve as it relates to the rate model, future projects, permit requirements, and rate stabilization.

In response to Council Member Katzakian, Mr. Bartlam stated the storm drain permitting issue is still pending and falls under the wastewater utility as well.

Council Member Johnson requested information regarding the City's current ratings by the various rating agencies.

In response to Ed Miller, Mr. Ayers stated the purpose of the treated wastewater that goes to the new Lodi Energy Center is to generate the steam to create the power.

In response to Myrna Wetzel, Deputy Public Works Director Charlie Swimley stated the sediment catchers work as filters to ensure sediment does not enter into the storm drain system and they are required until the project is finished.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 8:10 a.m.

ATTEST:

Randi Johl  
City Clerk

**LODI CITY COUNCIL  
REGULAR CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, MAY 16, 2012**

**C-1    Call to Order / Roll Call**

The City Council Closed Session meeting of May 16, 2012, was called to order by Mayor Mounce at 6:00 p.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Absent: None

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

**C-2    Announcement of Closed Session**

- a)    Conference with Steve Schwabauer, City Attorney, and Dean Gualco, Human Resources Manager (Labor Negotiators), Regarding Unrepresented Executive Management, Lodi City Mid-Management Association, Unrepresented Confidential Employees, AFSCME General Services and Maintenance & Operators, International Brotherhood of Electrical Workers, Fire Mid-Managers, and Lodi Professional Firefighters Pursuant to Government Code §54957.6
- b)    Conference with Steve Schwabauer, City Attorney (Labor Negotiator), Regarding Police Mid-Managers, Lodi Police Officers Association, and Lodi Police Dispatchers Association Pursuant to Government Code §54957.6

**C-3    Adjourn to Closed Session**

At 6:00 p.m., Mayor Mounce adjourned the meeting to a Closed Session to discuss the above matters. The Closed Session adjourned at 6:45 p.m.

**C-4    Return to Open Session / Disclosure of Action**

At 7:00 p.m., Mayor Mounce reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

Items C-2 (a) and C-2 (b) were discussion and direction only with no reportable action.

**A.    Call to Order / Roll Call**

The Regular City Council meeting of May 16, 2012, was called to order by Mayor Mounce at 7:00 p.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Absent: None

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

**B.    Presentations**

**B-1    Quarterly Update by the Greater Lodi Area Youth Commission (PRCS)**



Lauren Youngsma and Kinsey Green, members of the Greater Lodi Area Youth Commission, gave an update on the activities and accomplishments of the Commission.

**B-2    Presentation by the Lodi Public Library Foundation Regarding Carnegie Wall Mural Project and Fundraising Efforts (LIB)**

Lodi Public Library Foundation Board Vice President Helen Gross gave a presentation regarding the Carnegie Wall Mural project and the fundraising efforts.

**C.     Consent Calendar (Reading; Comments by the Public; Council Action)**

Council Member Johnson made a motion, second by Council Member Katzakian, to approve the following items hereinafter set forth, **except those otherwise noted**, in accordance with the report and recommendation of the City Manager.

**VOTE:**

The above motion carried by the following vote:

Ayes:    Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Noes:    None

Absent: None

**C-1    Receive Register of Claims in the Amount of \$1,979,665.58 (FIN)**

Claims were approved in the amount of \$1,979,665.58.

**C-2    Approve Minutes (CLK)**

Mayor Mounce made a motion, second by Mayor Pro Tempore Nakanishi, to approve the minutes of the May 1, 2012 (Shirtsleeve Session) and May 8, 2012 (Shirtsleeve Session) as written and the May 2, 2012 (Regular Meeting) as amended.

**VOTE:**

The above motion carried by the following vote:

Ayes:    Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Noes:    None

Absent: None

**C-3    Authorize Request for Proposals for Security Services for Hutchins Street Square Community Center (PRCS)**

Authorized the request for proposals for security services for Hutchins Street Square Community Center.

**C-4    Accept Improvements Under the Contract for Design and Construction of Municipal Service Center Transit Vehicle Maintenance Facility Solar Power Project (PW)**

Accepted the improvements under the contract for Design and Construction of Municipal Service Center Transit Vehicle Maintenance Facility Solar Power Project.

**C-5    Adopt Resolution Authorizing the City Manager to Execute Contract for Hutchins Street Reconstruction Project with A. M. Stephens Construction Company, Inc., of Lodi (\$863,466.53) (PW)**

This item was pulled for further discussion by Mayor Mounce.

In response to Mayor Mounce, Deputy Public Works Director Charlie Swimley and City Attorney Schwabauer stated the proposed contract is subject to the local hiring ordinance and does meet the \$200,000 minimum.

Mayor Mounce made a motion, second by Council Member Katzakian, to adopt Resolution No. 2012-67 authorizing the City Manager to execute contract for Hutchins Street Reconstruction Project with A. M. Stephens Construction Company, Inc., of Lodi, in the amount of \$863,466.53.

**VOTE:**

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Noes: None

Absent: None

**C-6 Adopt Resolution Authorizing the City Manager to Execute Contract for 2012 Alley Reconstruction Project with Biondi Paving, Inc., of Sacramento (\$128,550.50) (PW)**

Adopted Resolution No. 2012-59 authorizing the City Manager to execute contract for 2012 Alley Reconstruction Project with Biondi Paving, Inc., of Sacramento, in the amount of \$128,550.50.

**C-7 Adopt Resolution Authorizing the City Manager to Execute Contract for 2012 Disabled Access Improvements, Various Locations, with A. M. Stephens Construction Company, Inc., of Lodi (\$93,624.66) (PW)**

Adopted Resolution No. 2012-60 authorizing the City Manager to execute contract for 2012 Disabled Access Improvements, Various Locations, with A. M. Stephens Construction Company, Inc., of Lodi, in the amount of \$93,624.66.

**C-8 Adopt Resolution Authorizing the City Manager to Execute Agreement with Central Valley Clean Water Association for Participation in the Methylmercury Special Project (PW)**

Adopted Resolution No. 2012-61 authorizing the City Manager to execute agreement with Central Valley Clean Water Association for participation in the methylmercury special project.

**C-9 Adopt Resolution Authorizing the City Manager to Execute Consent to Assignment by Elevator Services Company to Otis Elevator Company (PW)**

Adopted Resolution No. 2012-62 authorizing the City Manager to execute Consent to Assignment by Elevator Services Company to Otis Elevator Company.

**C-10 Adopt Resolution Authorizing the City Manager to File Claim for 2011/12 Transportation Development Act Funds in the Amount of \$2,020,434 from Local Transportation Fund and \$256,361 from State Transit Assistance Fund (PW)**

Adopted Resolution No. 2012-63 authorizing the City Manager to file claim for 2011/12 Transportation Development Act funds in the amount of \$2,020,434 from Local Transportation Fund and \$256,361 from State Transit Assistance Fund.

**C-11 Adopt Resolution Approving Changes to Memorandum of Understanding for AFSCME - General Services and Maintenance and Operators - Lodi Professional Firefighters, and**

Lodi Mid-Management, Amendment to the Executive Management Statement of Benefits, and Changes to Confidential Employee Benefits (CM)

Council Member Johnson made a motion, second by Council Member Katzakian, to adopt Resolution No. 2012-68 approving changes to Memorandum of Understanding for AFSCME - General Services and Maintenance and Operators - Lodi Professional Firefighters, and Lodi Mid-Management, amendment to the Executive Management Statement of Benefits, and changes to Confidential employee benefits.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Noes: Council Member Johnson

Absent: None

C-12 Adopt Resolutions Approving CalPERS Employer Paid Member Contributions (CM)

This item was pulled for further discussion by Council Member Johnson.

In response to Council Member Johnson, City Attorney Schwabauer stated pursuant to the Government Code any salary and benefit changes for the City Council cannot go into effect until after the upcoming election, which is why the City Council retirement contribution will start in November instead of July.

Mayor Mounce made a motion, second by Council Member Katzakian, to adopt Resolution Nos. 2012-69 and 2012-70 approving CalPERS employer paid member contributions.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Noes: Council Member Johnson

Absent: None

C-13 Authorize City Manager to Send Letter to San Joaquin County Opposing the Development Text Amendment Regarding the Prohibition of Marketing Events at Wineries (CM)

This item was pulled for further discussion by Chamber of Commerce Executive Director Pat Patrick.

The following individuals spoke against the proposed County development text amendment imposing a moratorium on marketing events at wineries and in support of sending a letter of opposition as recommended, based on the negative impact on the wine and tourism industry: Pat Patrick, Chamber of Commerce; and Russ Munson, Wine and Roses.

In response to Mayor Mounce, Ryan Sherman explained what would be considered a marketing event at existing wineries and provided examples of the same.

Council Member Johnson made a motion, second by Council Member Hansen, to authorize the City Manager to send letter to San Joaquin County opposing the Development Text Amendment regarding the prohibition of marketing events at wineries.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Noes: None

Absent: None

C-14 Adopt Resolution Initiating Proceedings for the Levy and Collection of Assessments, Resolution Approving the Annual Report, and Resolution Declaring Intention to Levy and Collect Assessments for the Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1 for Fiscal Year 2012/13; and Set Public Hearing for June 20, 2012 (PW)

Adopted Resolution No. 2012-64 initiating proceedings for the levy and collection of assessments, Resolution No. 2012-65 approving the Annual Report, and Resolution No. 2012-66 declaring intention to levy and collect assessments for the Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1 for fiscal year 2012/13; and set public hearing for June 20, 2012.

D. Comments by the Public on Non-Agenda Items

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES. The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted. Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

Douglas and Janet Hauser spoke in regard to their concerns regarding swallows in their neighborhood and near the water basin at DeBenedetti Park. Deputy Public Works Director Charlie Swimley stated he would be working with Mr. and Mrs. Hauser to address their concerns.

The following individuals spoke in regard to their concerns regarding the potential cancellation of the after school program: Kelly Brown, Michael Aberle, Kristen Scott, Mike Faulkner, and Shannon Minnel.

The following individuals spoke in regard to the concerns regarding the adjusted hours of operation at the Hutchins Street Square pool: Barbara Koteles, Gail McBride, and Gene King.

E. Comments by the City Council Members on Non-Agenda Items

Council Member Johnson commended the efforts of those involved with the Roget Park project.

Mayor Pro Tempore Nakanishi provided a brief overview of the Governor's May Budget revise.

F. Comments by the City Manager on Non-Agenda Items

None.

G. Public Hearings - None

H. Communications

H-1 Monthly Protocol Account Report (CLK)

Mayor Mounce made a motion, second by Council Member Hansen, to approve the cumulative Monthly Protocol Account Report through April 30, 2012.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Noes: None

Absent: None

I. Regular Calendar

I-1 Introduce Ordinance Amending Lodi Municipal Code Chapter 10.12 - Enforcement and Obedience to Traffic Regulations - by Repealing and Reenacting Section 10.12.020, "Required Obedience to Traffic Regulations," in Its Entirety (CA)

City Attorney Schwabauer provided a brief overview of the proposed ordinance as set forth in the staff report, stating the ordinance is necessary to be compliant with the current state of the law.

Council Member Katzakian made a motion, second by Council Member Hansen, to introduce Ordinance No. 1859 amending Lodi Municipal Code Chapter 10.12 - Enforcement and Obedience to Traffic Regulations - by repealing and reenacting Section 10.12.020, "Required Obedience to Traffic Regulations," in its entirety.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Noes: None

Absent: None

J. Ordinances - None

K. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 8:20 p.m.

ATTEST:

Randi Johl  
City Clerk

**LODI CITY COUNCIL  
SHIRTSLEEVE SESSION  
CARNEGIE FORUM, 305 WEST PINE STREET  
TUESDAY, MAY 22, 2012**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, May 22, 2012, commencing at 7:00 a.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Absent: None

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 Receive Presentation Regarding Fiscal Year 2012/13 Budget (CM)

Deputy City Manager Jordan Ayers provided a PowerPoint presentation regarding the Fiscal Year 2012/13 budget. Specific topics of discussion included an overview of the General Fund departments including Police, Fire, Public Works, Administration, Internal Services, and non-departmental, departmental funding, fund balances, position changes, salary and benefits, services and supplies, and capital outlay.

In response to Mayor Mounce, Mr. Bartlam stated the main capital project that was not funded was the financial system upgrade.

In response to Mayor Pro Tempore Nakanishi, City Manager Bartlam stated the majority of the increases are in salary and benefits.

In response to Council Member Johnson, Mr. Bartlam stated during the last few years the majority of the capital outlay fund has been used for emergency repairs and now that the emergencies appear to have passed there is more of a focus on the financial system upgrade.

In response to Council Member Hansen, Mr. Ayers confirmed that there are some funds set aside for the financial software system but it is not enough.

In response to Council Member Hansen, Mr. Ayers stated that, without an agreement with the bargaining groups, the City will default to the old agreement with those whose concession agreements have expired.

In response to Council Member Hansen, Mr. Ayers stated last year \$220,000 was spent on vehicle replacement and this year only \$30,000 is budgeted for one vehicle.

In response to Council Member Hansen, Mr. Ayers stated all six positions for Police proposed to be unfunded are currently vacant. Mr. Ayers stated the positions could be funded at a later date if agreements are reached as savings are realized.

In response to Mayor Mounce, Mr. Ayers stated last year three of the six proposed positions in Police were used for concession purposes.

In response to Mayor Mounce, Fire Chief Larry Rooney stated he feels that the proposed Fire Department budget recommendation is sufficient for now as the department continues to evaluate

its needs throughout the year.

In response to Council Member Hansen, Mr. Ayers stated the additional associate engineer position is funded and accounted for in the total \$11,000 figure.

In response to Mayor Mounce, City Clerk Johl stated the two factors that could affect the \$65,000 figure for the general election are the number of candidates and unfunded mandates trickling down to the local agencies for absentee voting.

In response to Council Member Johnson, Mr. Ayers stated the approximate value of the 3% deferred compensation match is \$900,000.

In response to Mayor Pro Tempore Nakanishi, Mr. Bartlam stated there are no increases to any organizational funding other than Visit Lodi and that increase is based on a contractual pro rata formula of the Transit Occupancy Tax (TOT).

Mayor Mounce suggested reviewing the contract between the City of Lodi and Visit Lodi to evaluate the current formula and overall need for City contribution if the TOT is increasing.

In response to Mayor Mounce, Mr. Ayers stated the Arts Grants could be moved to Economic Development if so desired because they are both General Fund monies.

In response to Mayor Pro Tempore Nakanishi, Mr. Ayers stated the only remaining General Fund debt is approximately \$1.6 million for the 2002 bond issue for the public safety building, Hutchins Street Square, and the School Street renovation project.

In response to Council Member Hansen, Mr. Bartlam stated the old jail facility is still used by the City for storage space for equipment.

A brief discussion ensued amongst Council Member Hansen, Mayor Mounce, and Mr. Ayers regarding researching options for outsourcing the City's billing component as a cost savings measure.

In response to Mayor Pro Tempore Nakanishi, Mr. Bartlam stated that, while the Hutchins Street Square Foundation no longer directly contributes to the debt obligation, the Foundation does help raise funds for repairs at the facility.

In response to Myrna Wetzel, Police Chief Mark Helms stated there are four K-9 officers, \$6,000 is budgeted for maintenance of the dogs, and the officers receive 4.5% premium pay in addition to their regular salary for additional K-9 officer related responsibilities.

C. Comments by Public on Non-Agenda Items - None

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 7:45 a.m.

ATTEST:

Randi Johl  
City Clerk

**LODI CITY COUNCIL  
SPECIAL CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
TUESDAY, MAY 22, 2012**

A. Roll call

The Special Joint City Council meeting with the Lodi Arts Commission of May 22, 2012, held at Hutchins Street Square, 125 South Hutchins Street, Lodi, was called to order by Mayor Mounce at 5:45 p.m.

Present: Council Member Johnson, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Absent: Council Member Hansen, and Council Member Katzakian

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

Also in attendance from the Lodi Arts Commission were the following: Annalisa Sharp Babich, Ben Burgess, Nancy Carey, Catherine Metcalf, Lina Preszler, Maria Singleton, and Sandi Walker-Tansely.

B. Topic(s)

B-1 Discussion of Items of Mutual Concern

The City Council received a presentation from various members of the Lodi Arts Commission, Lodi Arts Foundation, and Art Advisory Board for Art in Public Places. General topics of discussion included First Friday Art Hop, 30th Anniversary Celebration, Taco Truck Cook Off, arts-related grants, Project Lodi Art, and the Take it to the Park project.

C. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 7:30 p.m.

ATTEST:

Randi Johl  
City Clerk



**LODI CITY COUNCIL  
SHIRTSLEEVE SESSION  
CARNEGIE FORUM, 305 WEST PINE STREET  
TUESDAY, MAY 29, 2012**

The May 29, 2012, Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was canceled.

ATTEST:

Randi Johl  
City Clerk



# CITY OF LODI

## COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Adopt Resolution Rejecting Non-Responsive Bids and Authorizing City Manager to Execute Contract for Well 6R Granular Activated Carbon Treatment System with Conco West, Inc., of Manteca (\$667,500)

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Public Works Director

**RECOMMENDED ACTION:** Adopt resolution rejecting non-responsive bids and authorizing City Manager to execute contract for Well 6R granular activated carbon treatment system with Conco West, Inc., of Manteca, in the amount of \$667,500.

**BACKGROUND INFORMATION:** This project consists of furnishing and installing a granular activated carbon (GAC) treatment system for Well 6R.

Plans and specifications for this project were approved on April 4, 2012. The City received the following 10 bids for this project on May 16, 2012. The four lowest bids were submitted using foreign GAC, rather than domestic GAC as required in the project specifications. Domestic GAC is required by the City because our experience indicates domestic GAC outlasts foreign GAC, saving long-term operation costs. For the reasons stated above, the four low bidders are deemed non-responsive, and staff recommends that they be rejected. The fifth bidder, Conco West, Inc., is the lowest responsive bidder for the project.

Bidder	Location	Bid
Engineer's Estimate		\$ 676,470.00
Syblon Reid Construction	Folsom	\$ 640,324.00
Hobbs Construction	Fresno	\$ 646,750.00
C. Overaa & Company	Richmond	\$ 649,000.00
Diede Construction	Woodbridge	\$ 649,982.97
Conco West, Inc.	Manteca	\$ 667,500.00
Ford Construction	Lodi	\$ 693,435.00
Tidelands Construction	Brentwood	\$ 706,335.00
Vinciguerra Construction	Jackson	\$ 731,300.00
Wayne Perry, Inc.	Buena Park	\$ 848,252.77*
Pacific Underground	San Jose	\$ 930,940.00

\*Corrected Figures

**FISCAL IMPACT:** Annual operation and maintenance costs for the water utility will increase as a result of this project. Operation costs are reimbursed through the City's DBCP settlement.

**FUNDING AVAILABLE:** This project will be funded by Water Capital Outlay Fund (181048).

\_\_\_\_\_  
Jordan Ayers  
Deputy City Manager/Internal Services Director

\_\_\_\_\_  
F. Wally Sandelin  
Public Works Director

Prepared by Lyman Chang, Senior Civil Engineer  
cc: Deputy Public Works Director – Utilities

Senior Civil Engineer

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

**WELL 6R  
GRANULAR ACTIVATED CARBON FILTER SYSTEM**

**CONTRACT**

---

CITY OF LODI, CALIFORNIA

THIS CONTRACT made by and between the CITY OF LODI, State of California, herein referred to as the "City," and CONCO WEST, INC., herein referred to as the "Contractor."

WITNESSETH:

That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

The complete Contract consists of the following documents which are incorporated herein by this reference, to-wit:

Notice Inviting Bids	The July 1992 Edition,
Information to Bidders	Standard Specifications,
General Provisions	State of California,
Special Provisions	Business and Transportation Agency,
Bid Proposal	Department of Transportation
Contract	
Contract Bonds	
Plans	

All of the above documents, sometimes hereinafter referred to as the "Contract Documents," are intended to cooperate so that any work called for in one and not mentioned in the other is to be executed the same as if mentioned in all said documents.

ARTICLE I - That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the City and under the condition expressed in the two bonds bearing even date with these presents and hereunto annexed, the Contractor agrees with the City, at Contractor's cost and expense, to do all the work and furnish all the materials except such as are mentioned in the specifications to be furnished by the City, necessary to construct and complete in a good workmanlike and substantial manner and to the satisfaction of the City the proposed improvements as shown and described in the Contract Documents which are hereby made a part of the Contract.

ARTICLE II - The City hereby promises and agrees with the Contractor to employ, and does hereby employ, the Contractor to provide all materials and services not supplied by the City and to do the work according to the terms and conditions for the price herein, and hereby contracts to pay the same as set forth in Section 5.600, "Measurement, Acceptance and Payment," of the General Provisions, in the manner and upon the conditions above set forth; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ARTICLE III - The Contractor agrees to conform to the provisions of Chapter 1, Part 7, Division 2 of the Labor Code. The Contractor and any Subcontractor will pay the general prevailing wage rate and other employer payments for health and welfare, pension, vacation, travel time, and subsistence pay, apprenticeship or other training programs. The responsibility for compliance with these Labor Code requirements is on the prime contractor.

ARTICLE IV - And the Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this agreement; also for all loss or damage arising out of the nature of the work aforesaid or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the Plans and Contract Documents and the requirements of the Engineer under them, to-wit:

Perform the work necessary to furnish and install a granular activated carbon filter system, complete with carbon median, on-site piping and electrical system, 520 linear feet of 14-inch water pipe, 311 linear feet of 12-inch wastewater pipe, and other incidental and related work, all as shown on the plans and specifications for "Well 6R Granular Activated Carbon Filter System".

CONTRACT ITEMS

ITEM NO.	DESCRIPTION	UNIT	EST'D. QTY	UNIT PRICE	TOTAL PRICE
1.	Mobilization	LS	1	\$ 10,000.00	\$ 10,000.00
2.	Cleaning and Grubbing	LS	1	\$ 5,000.00	\$ 5,000.00
3.	Abandon Water Valve and Cap Water Pipe	LS	1	\$ 1,500.00	\$ 1,500.00
4.	Traffic Control	LS	1	\$ 1,500.00	\$ 1,500.00
5.	Water Pollution Control	LS	1	\$ 2,500.00	\$ 2,500.00
6.	Furnish GAC Filter System	LS	1	\$300,000.00	\$ 300,000.00
7.	Furnish GAC Media	LS	1	\$ 54,000.00	\$ 54,000.00
8.	Install GAC Filter System	LS	1	\$140,130.00	\$ 140,130.00
9.	Install 10-Inch Water Valve	EA	1	\$ 2,300.00	\$ 2,300.00
10.	Install 10-Inch Ductile Iron Water Pipe	LF	22	\$ 370.00	\$ 8,140.00

ITEM NO.	DESCRIPTION	UNIT	EST'D. QTY	UNIT PRICE	TOTAL PRICE
11.	Install 14-Inch Water Pipe	LF	520	\$ 90.00	\$ 46,800.00
12.	Install 3-Inch Wastewater Pipe	LF	12	\$ 200.00	\$ 2,400.00
13.	Install 12-Inch Wastewater Pipe	LF	311	\$ 130.00	\$ 40,430.00
14.	Install 48-Inch Wastewater Manhole	EA	1	\$ 4,000.00	\$ 4,000.00
15.	Minor Concrete	CY	14	\$ 500.00	\$ 7,000.00
16.	Install Removable Steel Bollard	EA	2	\$ 400.00	\$ 800.00
17.	Chain Link Fence with Mow-Strip	LS	1	\$ 20,000.00	\$ 20,000.00
18.	Electrical System	LS	1	\$ 21,000.00	\$ 21,000.00
TOTAL					\$ 667,500.00

ARTICLE V - By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

ARTICLE VI - It is further expressly agreed by and between the parties hereto that, should there be any conflict between the terms of this instrument and the Bid Proposal of the Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE VII - The City is to furnish the necessary rights-of-way and easements and to establish lines and grades for the work as specified under the Special Provisions. All labor or materials not mentioned specifically as being done by the City will be supplied by the Contractor to accomplish the work as outlined in the specifications.

ARTICLE VIII - The Contractor agrees to commence work pursuant to this contract within 15 calendar days after the City Manager has executed the contract and to diligently prosecute to completion within **100 WORKING DAYS**.

WHEN SIGNING THIS CONTRACT, THE CONTRACTOR AGREES THAT THE TIME OF COMPLETION FOR THIS CONTRACT IS REASONABLE AND THE CONTRACTOR AGREES

TO PAY THE CITY LIQUIDATED DAMAGES AS SET FORTH IN SECTION 6-04.03 OF THE SPECIAL PROVISIONS. CONTRACTOR AGREES THAT THIS AMOUNT MAY BE DEDUCTED FROM THE AMOUNT DUE THE CONTRACTOR UNDER THE CONTRACT.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date written below.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date written below.

CONTRACTOR:

CITY OF LODI

\_\_\_\_\_

By: \_\_\_\_\_  
Konradt Bartlam  
City Manager

By: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

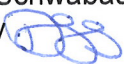
\_\_\_\_\_

Title

\_\_\_\_\_  
City Clerk

(CORPORATE SEAL)

Approved As To Form

\_\_\_\_\_  
D. Stephen Schwabauer  
City Attorney 

RESOLUTION NO. 2012-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL REJECTING  
NON-RESPONSIVE BIDS, AWARDING CONTRACT, AND AUTHORIZING THE  
CITY MANAGER TO EXECUTE CONTRACT FOR WELL 6R GRANULAR  
ACTIVATED CARBON TREATMENT SYSTEM

=====

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on May 16, 2012, at 11:00 a.m., for the Well 6R Granular Activated Carbon Treatment System, described in the plans and specifications therefore approved by the City Council on April 4, 2012; and

WHEREAS, said bids have been checked and tabulated and a report thereof filed with the City Manager as follows:

<b>Bidder</b>	<b>Bid</b>
Syblon Reid Construction	\$ 640,324.00*
Hobbs Construction	\$ 646,750.00*
C. Overaa & Company	\$ 649,000.00*
Diede Construction	\$ 649,982.97*
Conco West, Inc.	\$ 667,500.00
Ford Construction	\$ 693,435.00
Tidelands Construction	\$ 706,335.00
Vinciguerra Construction	\$ 731,300.00
Wayne Perry, Inc.	\$ 848,252.77**
Pacific Underground	\$ 930,940.00

\*Non-responsive Bids

\*\*Corrected Figures

WHEREAS, as the four lowest bids were submitted using foreign GAC, rather than domestic GAC as required in the project specifications, these four bids were deemed non-responsive, and staff recommends that they be rejected; and

WHEREAS, staff recommends awarding the contract for the Well 6R Granular Activated Carbon Filter System to the lowest responsive bidder, Conco West, Inc., of Manteca, California, in the amount of \$667,500.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby reject the four lowest bids and award the contract for the Well 6R Granular Activated Carbon Filter System to the lowest responsive bidder, Conco West, Inc., of Manteca, California, in the amount of \$667,500; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the contract on behalf of the City of Lodi.

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2012-\_\_\_\_\_



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Contract for Grape Bowl Scoreboard Improvements with Gary's Signs, of Lodi (\$45,515) and Appropriating Funds (\$55,000)

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Public Works Director

**RECOMMENDED ACTION:** Adopt resolution authorizing City Manager to execute contract for Grape Bowl scoreboard improvements with Gary's Signs, of Lodi, in the amount of \$45,515 and appropriating funds in the amount of \$55,000.

**BACKGROUND INFORMATION:** This project consists of installation of a permanent scoreboard in the Grape Bowl prior to the start of next football season.

On March 21, 2012, Council authorized the City Manager to execute a contract with Siegfried Engineering to prepare design documents for the Phase 3 improvements; approved the sole source purchase of the Grape Bowl scoreboard from Daktronics Company; and approved plans, specifications and advertisement for the Grape Bowl scoreboard improvements. Funds to install the scoreboard were not appropriated in the Council action. The City received the following three bids for this project on May 9, 2012.

Bidder	Location	Bid
Engineer's Estimate		\$65,000
Gary's Signs	Lodi	\$45,515
Arrow Sign Company	Oakland	\$50,809
Sunset Signs	Lodi	\$53,200

The bid from Gary's Signs did contain irregularities. The bidder identified the "Total Bid" amount of the project but did not include unit costs for each of the five lump sum line items. State contract law allows the City to waive minor irregularities. Since each line item is reflected as a lump sum quantity, and the total of the line items is essentially a lump sum cost, the irregularity for this bid is considered minor.

Staff recommends the appropriation of \$55,000 for the construction contract, staff time and contingencies.

**FISCAL IMPACT:** A slight increase in Grape Bowl facility maintenance is anticipated for upkeep of the scoreboard.

**FUNDING AVAILABLE:** Requested Appropriation:  
Parks and Recreation Capital Outlay Fund (1212): \$55,000

\_\_\_\_\_  
Jordan Ayers  
Deputy City Manager/Internal Services Director

\_\_\_\_\_  
F. Wally Sandelin  
Public Works Director

\_\_\_\_\_  
Jeff Hood  
Interim Parks, Recreation & Cultural Services Director

Prepared by Charles E. Swimley, Jr., City Engineer/Deputy Public Works Director  
FWS/pmf

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager



**GRAPE BOWL SCOREBOARD IMPROVEMENTS**  
**221 Lawrence Street**

**CONTRACT**

---

CITY OF LODI, CALIFORNIA

THIS CONTRACT made by and between the CITY OF LODI, State of California, herein referred to as the "City," and GARY'S SIGNS, herein referred to as the "Contractor."

WITNESSETH:

That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

The complete Contract consists of the following documents which are incorporated herein by this reference, to-wit:

Notice Inviting Bids	The July 1992 Edition,
Information to Bidders	Standard Specifications,
General Provisions	State of California,
Special Provisions	Business and Transportation Agency,
Bid Proposal	Department of Transportation
Contract	
Contract Bonds	
Plans	

All of the above documents, sometimes hereinafter referred to as the "Contract Documents," are intended to cooperate so that any work called for in one and not mentioned in the other is to be executed the same as if mentioned in all said documents.

ARTICLE I - That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the City and under the condition expressed in the two bonds bearing even date with these presents and hereunto annexed, the Contractor agrees with the City, at Contractor's cost and expense, to do all the work and furnish all the materials except such as are mentioned in the specifications to be furnished by the City, necessary to construct and complete in a good workmanlike and substantial manner and to the satisfaction of the City the proposed improvements as shown and described in the Contract Documents which are hereby made a part of the Contract.

ARTICLE II - The City hereby promises and agrees with the Contractor to employ, and does hereby employ, the Contractor to provide all materials and services not supplied by the City and to do the work according to the terms and conditions for the price herein, and hereby contracts to pay the same as set forth in Section 5.600, "Measurement, Acceptance and Payment," of the General Provisions, in the manner and upon the conditions above set forth; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ARTICLE III - The Contractor agrees to conform to the provisions of Chapter 1, Part 7, Division 2 of the Labor Code. The Contractor and any Subcontractor will pay the general prevailing wage rate and other employer payments for health and welfare, pension, vacation, travel time, and subsistence pay, apprenticeship or other training programs. The responsibility for compliance with these Labor Code requirements is on the prime contractor.

ARTICLE IV - And the Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this agreement; also for all loss or damage arising out of the nature of the work aforesaid or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the Plans and Contract Documents and the requirements of the Engineer under them, to-wit:

Perform the work necessary to assemble and install (1) 25-foot LED scoreboard, (1) 25-foot non-backlit sponsor display panel and sound system provided by the City of Lodi, manufactured by Daktronics. Additional work shall include the Contractor providing and installing a structural steel painted frame, concrete footing, trenching, backfill, compaction, electrical, fiber optic, audio cabling and terminations, all as shown on the plans and specifications for "Grape Bowl Scoreboard Improvements, 221 Lawrence Avenue".

#### CONTRACT ITEMS

ITEM NO.	DESCRIPTION	UNIT	EST'D. QTY	UNIT PRICE	TOTAL PRICE
1.	Assemble and Install City-Supplied Scoreboard and Appurtenances, including Erosion Control Requirements	LS	1	\$ --	\$ --
2.	Furnish and Install Painted Structural Steel Frame including (2) Reinforced Concrete Footing 3' Diameter x 13' Deep	LS	1	\$ --	\$ --
3.	Furnish all Labor and Non-City-Supplied Materials and Equipment for Installation of Electrical, Fiber, Audio and Spare Conduits, Backfill and Compaction	LS	1	\$ --	\$ --
4.	Furnish all Labor, Materials, and Equipment to Install Pull Box	LS	1	\$ --	\$ --
5.	Furnish all Labor, Materials and Equipment to Install all Electrical, Fiber Optic and Audio Cabling and Terminations	LS	1	\$ --	\$ --
TOTAL					\$ 45.515.00

ARTICLE V - By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the

provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

ARTICLE VI - It is further expressly agreed by and between the parties hereto that, should there be any conflict between the terms of this instrument and the Bid Proposal of the Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE VII - The City is to furnish the necessary rights-of-way and easements and to establish lines and grades for the work as specified under the Special Provisions. All labor or materials not mentioned specifically as being done by the City will be supplied by the Contractor to accomplish the work as outlined in the specifications.

ARTICLE VIII - The Contractor agrees to commence work pursuant to this contract within 15 calendar days after the City Manager has executed the contract and to diligently prosecute to completion within **30 WORKING DAYS**.

WHEN SIGNING THIS CONTRACT, THE CONTRACTOR AGREES THAT THE TIME OF COMPLETION FOR THIS CONTRACT IS REASONABLE AND THE CONTRACTOR AGREES TO PAY THE CITY LIQUIDATED DAMAGES AS SET FORTH IN SECTION 6-04.03 OF THE SPECIAL PROVISIONS. CONTRACTOR AGREES THAT THIS AMOUNT MAY BE DEDUCTED FROM THE AMOUNT DUE THE CONTRACTOR UNDER THE CONTRACT.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date written below.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date written below.

CONTRACTOR:

CITY OF LODI

\_\_\_\_\_

By: \_\_\_\_\_  
Konradt Bartlam  
City Manager

By: \_\_\_\_\_

Date: \_\_\_\_\_


Attest

\_\_\_\_\_  
Title

\_\_\_\_\_  
City Clerk

(CORPORATE SEAL)

Approved As To Form

\_\_\_\_\_  
D. Stephen Schwabauer  
City Attorney 

1. AA# \_\_\_\_\_  
2. JV# \_\_\_\_\_

CITY OF LODI APPROPRIATION ADJUSTMENT REQUEST			
TO:	Internal Services Dept. - Budget Division		
3. FROM:	Rebecca Areida-Yadav	5. DATE:	05/10/2012
4. DEPARTMENT/DIVISION: Public Works			

6. REQUEST ADJUSTMENT OF APPROPRIATION AS LISTED BELOW					
	FUND #	BUS. UNIT #	ACCOUNT #	ACCOUNT TITLE	AMOUNT
A.  SOURCE OF  FINANCING					
	1212		3205	Fund Balance	\$ 55,000.00
B.  USE OF  FINANCING					
	1212	1212811	1825.2400	Grape Bowl	\$ 55,000.00

7. REQUEST IS MADE TO FUND THE FOLLOWING PROJECT NOT INCLUDED IN THE CURRENT BUDGET
<p>Please provide a description of the project, the total cost of the project, as well as justification for the requested adjustment. If you need more space, use an additional sheet and attach to this form.</p> <p>Contract for Grape Bowl scoreboard improvements with Gary's Signs.</p>
<p>If Council has authorized the appropriation adjustment, complete the following:</p> <p>Meeting Date: _____ Res No: _____ Attach copy of resolution to this form.</p> <p>Department Head Signature: <u>Cheryl for PWS</u></p>

8. APPROVAL SIGNATURES
Deputy City Manager/Internal Services Manager _____ Date _____

Submit completed form to the Budget Division with any required documentation.  
Final approval will be provided in electronic copy format.

RESOLUTION NO. 2012-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL AWARDING  
CONTRACT, AUTHORIZING THE CITY MANAGER TO  
EXECUTE CONTRACT FOR GRAPE BOWL SCOREBOARD  
IMPROVEMENTS PROJECT, 221 LAWRENCE STREET, AND  
FURTHER APPROPRIATING FUNDS

=====

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on May 9, 2012, at 11:00 a.m., for the Grape Bowl Scoreboard Improvements Project, 221 Lawrence Street, described in the plans and specifications therefore approved by the City Council on March 21, 2012; and

WHEREAS, said bids have been checked and tabulated and a report thereof filed with the City Manager as follows:

<b>Bidder</b>	<b>Bid</b>
Gary's Signs	\$45,515
Arrow Sign Company	\$50,809
Sunset Signs	\$53,200

WHEREAS, staff recommends waiving minor irregularities in the bid and awarding the contract for the Grape Bowl Scoreboard Improvements Project, 221 Lawrence Street, to the low bidder, Gary's Signs, of Lodi, California, in the amount of \$45,515; and

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby award the contract for the Grape Bowl Scoreboard Improvements Project, 221 Lawrence Street, to the low bidder, Gary's Signs, of Lodi, California, in the amount of \$45,515; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the contract; and

BE IT FURTHER RESOLVED that funds in the amount of \$55,000 be appropriated from the Parks and Recreation Capital Outlay Fund for this project.

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2012-\_\_\_\_\_



# CITY OF LODI

## COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Amendment No. 2 to Professional Services Agreement with R.F. MacDonald Company, of Modesto, for Boiler Cleaning and Inspection at White Slough Water Pollution Control Facility (\$11,050)

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Public Works Director

**RECOMMENDED ACTION:** Adopt resolution authorizing City Manager to execute Amendment No. 2 to professional services agreement with R.F. MacDonald Company, of Modesto, for boiler cleaning and inspection at White Slough Water Pollution Control Facility, in the amount of \$11,050.

**BACKGROUND INFORMATION:** The City Manager executed a professional services agreement with R.F. MacDonald Company on March 13, 2012, in the amount of \$19,750 for the re-tube of Cleaver Brooks Boiler CB200-50 at the White Slough Water Pollution Control Facility. On May 2, 2012, Council authorized Amendment No. 1 in the amount of \$11,495, for repair of a cracked Morrison tube that was discovered during the re-tube work.

Periodic inspection of the boilers is required in order to remain compliant with permits issued by the San Joaquin County Air Pollution Control District, and the inspection is now due.

In order to meet the compliance deadline, staff recommends approval of Amendment No. 2 to the R.F. MacDonald Company professional services agreement to perform the required inspections, resulting in a net increase in contract value of \$11,050.

**FISCAL IMPACT:** Inspection of the boilers is necessary to remain compliant with permit requirements. If the compliance deadline is not met, the City may incur fines.

**FUNDING AVAILABLE:** Wastewater Plant Maintenance (170403): \$11,050

\_\_\_\_\_  
Jordan Ayers  
Deputy City Manager/Internal Services Director

\_\_\_\_\_  
F. Wally Sandelin  
Public Works Director

Prepared by Larry Parlin, Deputy Public Works Director – Utilities  
FWS/LP/pmf

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

AMENDMENT NO. 2

R.F. MacDonald Company  
Professional Services Agreement

THIS AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT, is made and entered this \_\_\_\_\_ day of May, 2012, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and R.F. MACDONALD COMPANY (hereinafter "CONSULTANT").

WITNESSETH:

1. WHEREAS, CONSULTANT and CITY entered into a Professional Services Agreement (Agreement) on March 13, 2012, as set forth in Exhibit 1 (attached).
2. WHEREAS, the Agreement was amended by Council action per Resolution No. 2012-50 on May 2, 2012.
3. WHEREAS, CITY requested to further amend said Agreement as set forth in Exhibit 2; and
4. WHEREAS, CONSULTANT agrees to said amendment;

NOW, THEREFORE, the parties agree to amend the Scope of Services and Fee, as set forth in the Agreement as Exhibits 1 and 2.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Amendment No. 2 on \_\_\_\_\_, 2012.

CITY OF LODI, a municipal corporation  
Hereinabove called "CITY"

R.F. MACDONALD COMPANY  
Hereinabove called "CONSULTANT"

\_\_\_\_\_  
KONRADT BARTLAM  
City Manager

\_\_\_\_\_  
Name:  
Title:

Attest:

\_\_\_\_\_  
RANDI JOHL, City Clerk

Approved as to Form:

\_\_\_\_\_  
D. STEPHEN SCHWABAUER  
City Attorney



## AGREEMENT FOR PROFESSIONAL SERVICES

### ARTICLE 1 PARTIES AND PURPOSE

#### Section 1.1 Parties

THIS AGREEMENT is entered into on March 13, 2012, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and R.F. MacDonald (hereinafter "CONTRACTOR").

#### Section 1.2 Purpose

CITY selected the CONTRACTOR to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for retubing of Boiler No. 1 at White Slough Water Pollution Control Facility (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

### ARTICLE 2 SCOPE OF SERVICES

#### Section 2.1 Scope of Services

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

#### Section 2.2 Time For Commencement and Completion of Work

CONTRACTOR shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY or on the date set forth in Section 2.6, whichever occurs first, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONTRACTOR shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be



counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall remain in contact with reviewing agencies and make all efforts to review and return all comments.

**Section 2.3 Meetings**

CONTRACTOR shall attend meetings as may be set forth in the Scope of Services.

**Section 2.4 Staffing**

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONTRACTOR of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONTRACTOR of any changes of CONTRACTOR's project staff prior to any change.

CONTRACTOR represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONTRACTOR represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

**Section 2.5 Subcontracts**

Unless prior written approval of CITY is obtained, CONTRACTOR shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

**Section 2.6 Term**

The term of this Agreement commences on October 1, 2011 and terminates upon the completion of the Scope of Services or on October 1, 2012, whichever occurs first.

### **ARTICLE 3** **COMPENSATION**

#### **Section 3.1    Compensation**

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONTRACTOR shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

#### **Section 3.2    Method of Payment**

CONTRACTOR shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONTRACTOR's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

#### **Section 3.3    Costs**

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

#### **Section 3.4    Auditing**

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Agreement. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

**ARTICLE 4**  
**MISCELLANEOUS PROVISIONS**

**Section 4.1 Nondiscrimination**

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any sub CONTRACTOR on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

**Section 4.2 ADA Compliance**

In performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

**Section 4.3 Indemnification and Responsibility for Damage**

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

**Section 4.4 No Personal Liability**

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

**Section 4.5 Responsibility of CITY**

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

**Section 4.6 Insurance Requirements for CONTRACTOR**

CONTRACTOR shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

**Section 4.7 Successors and Assigns**

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

**Section 4.8 Notices**

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY:                   City of Lodi  
                                  221 West Pine Street  
                                  P.O. Box 3006  
                                  Lodi, CA 95241-1910  
                                  Attn: Kenny Capitanich

To CONTRACTOR:   R.F. MacDonald Co.  
                                  1549 Cummins Drive  
                                  Modesto, CA 95358  
                                  Attn: Anthony Marino

**Section 4.9 Cooperation of CITY**

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

**Section 4.10 CONTRACTOR is Not an Employee of CITY**

CONTRACTOR agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONTRACTOR meet specific standards without regard to the manner and means of accomplishment thereof.

**Section 4.11 Termination**

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase.

Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

**Section 4.12 Confidentiality**

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by CONTRACTOR as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

**Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees**

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

**Section 4.14 City Business License Requirement**

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

**Section 4.15 Captions**

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

**Section 4.16 Integration and Modification**

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

**Section 4.17 Contract Terms Prevail**

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

**Section 4.18 Severability**

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**Section 4.19 Ownership of Documents**

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

**Section 4.20 Authority**

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.


**Section 4.21 Federal Transit Funding Conditions**

☐ If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit        apply to this contract. In the event of a conflict between the terms of this contract or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation

ATTEST:

  
\_\_\_\_\_  
RANDI JOHL  
City Clerk

  
\_\_\_\_\_  
KONRADT BARTLAM, City Manager

APPROVED AS TO FORM:  
D. STEPHEN SCHWABAUER, City Attorney  
JANICE D. MAGDICH, Deputy City Attorney

CONTRACTOR:  
R.F. MACDONALD CO.

By:  \_\_\_\_\_

By:  \_\_\_\_\_

Name:

Title:

Sean Skibo  
General mgt

**Attachments:**

**Exhibit A – Scope of Services**

**Exhibit B – Fee Proposal**

**Exhibit C – Insurance Requirements**

**Exhibit D – Federal Transit Funding Conditions (if applicable)**

Doc ID:PSA#-MSC16

FUNDING SOURCE: WASTERWATER CAPITAL (171493)

CA:rev.09.2011

EXHIBIT A

**SCOPE OF SERVICES**

This project consists of R.F. MacDonald Co. retubing Boiler No. 1 and replacing the rear tube plate located at White Slough Water Pollution Control Facility. Price including Labor, Materials, and tax will be \$19,749.00. The total cost of this project shall not exceed \$19,750.00. An itemized list of work to be completed is included in the fee proposal, attached hereto as Exhibit B.





1549 Cummins Drive  
Modesto, CA 95358  
Phone: 209.576.0726  
Fax: 209.576.1312  
www.rfmacdonald.com

SAN FRANCISCO  
FRESNO  
LAS VEGAS  
LOS ANGELES  
SAN DIEGO  
RENO

Lodi Wastewater Treatment Plant  
12751 North Thornton Road  
Lodi CA

September 16, 2011

Reference Quote: LWWTMF7232011AM

Attention: Kenneth Capitanich  
Phone: 209.333.6832  
Fax: 209.333.6867  
E-Mail: Kcapitanich@lodi.gov

Kenneth,  
In response to your inquiry for a quotation, R.F. MacDonald Co. is pleased to provide the following quotation for your review and consideration.

**Retube Your Cleaver-Brooks CB200-50 SN OL096460**

- Lock out energy sources
- Open front and rear heads
- Cut out all (49) boiler tubes
- Remove hand hole plates and clean all gasket faces
- Wash out boiler of all loose scale and debris
- Remove complete rear tube sheet.
- Clean and prep area for new rear tube sheet.
- Set, place and weld new tube sheet to manufacturer specifications.
- Prepare tube sheet and perform Liquid dye test on sheet to check cracks
- Provide and install (49) 2.5" x .105 m/w SA 178A boiler tubes (tubes are upgraded from .095 m/w to .105 m/w tubes)
- Roll and bead front tube attachments and upper rear attachments
- Seal weld hot pass rear tube attachments
- Stress relieve seal welds
- Provide and install new hand hole gaskets and McD&M level control gaskets
- Fill unit
- Provide State Authorized Inspector to witness hydro test of unit
- Install new fireside gaskets and close front and rear heads
- All welding to be done in accordance with ASME and NBIC rules and regulations
- File all necessary ASME and NBIC code paperwork
- Provide code welding inspection/inspector for NBIC compliance.
- Combustion tuning not included in this proposal.

Price Including Labor, Materials, and tax is.....\$19,749.00

Quote # LWWTMF6232011AM



## R.F. MacDonald Co.

- **Not Covered:** Any work that is not specifically described above
- Unit needs to be cool at time of repairs
- ***Any additional work found upon further inspection or during repairs will be at an additional cost***

### General Terms and Conditions

Quotation is valid for 30 days. Sales tax, freight, installation (including boil-out, electrical connection, insulation and utilities) start-up, etc. are not included unless specifically stated in body of quotation. Permits from building department and the Air Pollution Control District may be required but are not included unless specifically stated. Unless noted otherwise, we have not included any special air pollution emission control equipment or source testing that may be required. If required, please contact us for a quotation. Buyer cannot return any material without our express written authorization and upon terms and payments to R. F. MacDonald Co. of any re-stocking charges up to 100% of the purchase amount.

If work is deferred at your request, we reserve the right to re-quote if prices have changed. We have not included any provisions for handling, removing, or disposing of any asbestos containing material. All labor is at normal working hours. Night, weekend or holiday work is not included unless otherwise noted. Orders entered and subsequently canceled are subject to the remedies provided by the Uniform Commercial Code.

**Claims:** You are responsible for inspecting merchandise on receipt and for filing claims with the carriers for damage or loss. All claims for shortages and damages must be made in writing to the carriers within ten (10) days of receipt. We suggest you call the carrier immediately upon noticing any possible freight related damage and arrange for inspection before proceeding with unpacking. Photographs taken while the delivery truck is still on sight are recommended if possible.

Under no circumstances may you withhold payment or charge the Company for freight or warranty related claims. No claim for expenses incurred for corrective work done on merchandise provided by the Company will be considered or accepted unless specifically agreed to in writing, in advance of the work being done, by an authorized manager of the company.

**Service Charges** We reserve the right to take action to collect any invoice which is not paid when due. We also assess a late payment SERVICE CHARGE on the day following the due date and monthly thereafter against all amounts remaining unpaid on each such date. Subject to any limitations that may be imposed by applicable law, the amount of this charge is 1 1/2% of the amount remaining unpaid on each such date.

This policy will be applied to customers who permit their account to become delinquent. It is your responsibility to notify R.F. MacDonald Co. of any extenuating circumstances that may affect your payment and work out a solution. Please know that our interest lies not in collecting a service charge, but in receiving timely payment of your invoice.

**In Warranty Materials and Disclaimer of Warranties:** You will rely solely on the warranty provided by the manufacturer. Your sole and exclusive remedy for breach of warranty shall be as provided in the manufacturer's standard warranty unless otherwise specifically expressed in writing. You will be invoiced in the regular manner for all material and parts even though it may be an in-warranty transaction. Credit will be issued promptly on our receipt of proof of return, and, as long as the return is within the prescribed time limit and has been properly authorized. Please note that withholding payment of any invoice in anticipation of an in-warranty credit is not consistent with our terms of sale.



## R.F. MacDonald Co.

R.F. MacDonald Co. makes no warranty expressed or implied of any kind. We make no claim of fitness or merchantability or any other warranty, expressed or implied, nor is anyone else, whether employed by R.F. MacDonald Co., or not, authorized to do so on our behalf. We specifically disclaim the warranty of merchantability and the warranty of fitness.

In no event shall R.F. MacDonald Co. be liable to you or any person, corporation or other type of legal entity for any ~~special, direct, indirect, incidental or consequential~~ damage of any kind, including but not limited to, loss of products, loss of time, loss of use, loss of production, loss of savings or revenues, ~~cost of replacement goods, labor costs or other~~ charges in connection with product use or malfunction, the repair or replacement of defective parts whether such claims are alleged in strict liability, negligence, tort, contract or otherwise and even if R.F. MacDonald Co. is informed in advance of the possibility of such damages. OK RFM  
SS  
2/10/12

**Normal Use and Service:** Normal use and service implies that failure due to accident, misuse, abuse, or neglect is not covered by the warranty. Any damage caused by replacement parts not provided by R. F. MacDonald Co. or the manufacturer will void the warranty. Deviation from recommended application, system design; installation or service practices may be considered misuse and/or abuse.

Warranties are conditioned upon the equipment being properly maintained and operated within the equipment's capacity under normal load conditions with competent supervised operators, and proper water conditioning (where applicable).

**Not Covered Costs:** Warranty does not include routine and preventative maintenance service. Typical routine and maintenance items:

- Misc. adjustments (i.e. pilots, igniters, level controls, pressure/temperature switches, other limit switches, flame scanner alignment, etc)
  - General cleaning (Oil, water, gas, air filters or strainers)
  - Torque of bolts (valve packing, boiler head bolts, valve flange bolts, etc)
  - Refractory care (i.e. Minor expansion crack repair, wash-coating, etc.)
  - Combustion and/or linkage adjustment (Four combustion checks and adjustments annually are typical)
- Please refer to the manufacturers operating and maintenance instructions for additional details of the requirements of your new equipment.

Acceptance: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name of Person: \_\_\_\_\_

Purchase Order No. \_\_\_\_\_

Regards;

R. F. MacDonald Co.

*Anthony Marino*

Anthony Marino  
Aftermarket Sales  
(209) 747-1817

Mike Flora

Mike Flora  
Boilermaker Foreman  
RF MacDonald Co.  
Office (209)576-0726  
Cell (209)595-6172  
Fax (209)576-0751

EXHIBIT C



**Insurance Requirements for Contractor** The Contractor shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Contractor and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Contractor's operations under this contract, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

1. COMPREHENSIVE GENERAL LIABILITY
2. COMPREHENSIVE AUTOMOBILE LIABILITY

\$1,000,000 Ea. Occurrence

\$1,000,000 - Ea. Occurrence

NOTE: Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

NOTE: (1) The street address of the CITY OF LODI must be shown along with (a) and (b) above: 221 West Pine Street, Lodi, California, 95241-1910; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

- (a) Additional Named Insured Endorsement  
Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers as additional named insureds.  
  
(This endorsement shall be on a form furnished to the City and shall be included with Contractor's policies.)
- (b) Primary Insurance Endorsement  
Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.
- (c) Severability of Interest Clause  
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.
- (d) Notice of Cancellation or Change in Coverage Endorsement  
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

**Compensation Insurance** The Contractor shall take out and maintain during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. A waiver of subrogation is required for workers compensation insurance. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

NOTE: No contract agreement will be signed nor will any work begin on a project until the proper insurance certificate is received by the City.

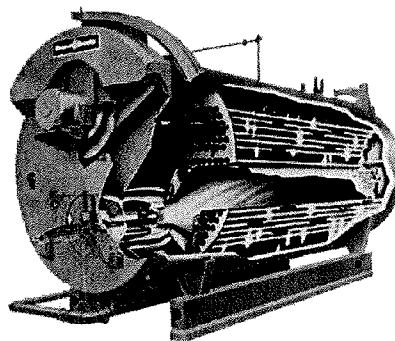


1549 Cummins Drive  
Modesto, CA 95358  
Phone: 209.576.0726  
Fax: 209.576.1312  
www.rfmacdonald.com

April 16, 2012

City of Lodi—WWTP  
White Slough- Thornton Road  
Lodi, CA 95241

Attention: Ken Capitanich  
KCapitanich@lodi.gov  
Ref Quote: CL-AM04162012



SAN FRANCISCO  
FRESNO  
LAS VEGAS  
LOS ANGELES  
SAN DIEGO  
RENO

#### Equipment List

Cleaver Brooks CBLE 700-50 SNOL106106- Boiler #3 **Tuned on NG/Digester Fuel .**  
Cleaver Brooks CB 700-50 SN L96460 Boiler #1 **Tuned on NG/Digester Fuel.**  
Cleaver Brooks CB 700-50 SN L97261 Boiler #2 **Tuned on NG/Digester Fuel.**

Mr. Capitanich:

At **R.F. MacDonald Co.** we understand the importance of:

- **Safe work practices and Safe Equipment Operation in Compliance with all Manufacturer's, Insurance Company's, Local, State and National Regulations**
- Maximizing Operational Efficiency to reduce fuel costs
- Equipment and System reliability for maximum up time.
- Air Pollution Regulation Compliance

**R. F. MacDonald Co.** is pleased to announce that we have developed a scheduled maintenance and compliance program designed specifically to provide value to customers with safe, efficient, reliable and low emission operation of your fired equipment. Our scheduled maintenance/compliance plan is really an Assured Efficiency/Emission Compliance Plan, **AECP**. Clients of our program are introduced to our **AECP** Team members who will support your boiler plant operations to maximize efficiency and full emission compliance.

As the source owner, it is your responsibility to comply with SJVUAPCD permit requirements which **includes record keeping. Don't add unnecessary cost** or penalties to your business. At **R.F. MacDonald Co.** we have the staff, the experience, and the equipment to provide you value for your dollar.

One low **annual price takes care of your scheduled boiler plant service** and you can rest assured that optimum efficiency is obtained from your boilers at all times. You only pay extra for parts and service (if and when they are needed).

As a **PREFERRED CUSTOMER**, under the **AECP** programs you are entitled to a special **discount of 15% on spare or replacement parts** for the equipment covered in this contract. After all, if we are to keep good customers we must provide expert service and protect your interest and money.

Please review the attached plan outline and proposal. Feel free to call us for additional details or a visit from one of our representatives.

It is important to note that **AECP** customers will have priority on emergency service calls.

**ASSURED EFFICIENCY/COMPLIANCE PLAN FOR ANNUAL  
BOILER EFFICIENCY AND PLANT SERVICES**

**SECTION I** includes complete annual boiler cleaning and inspection to clean heat transfer surfaces for maximum efficiency.

**SECTION II** includes complete periodic preventative maintenance services and fine-tuning to factory specifications for absolute maximum combustion efficiency.

- The attached Section I and II reports forms are completed as applicable by our service personnel on completion of the inspections and submitted for your permanent records.
- This contract is not transferable.
- This contract is available for renewal from year to year. A new contract will be submitted by R.F. MacDonald Co. prior to the due date of the next annual renewal fee.
- This contract does not include the furnishing of repair or replacement parts or any other material that may fail or require replacement due to normal wear and tear except as noted. (15% Preferred Customer Discount on Parts).
- Any calls in addition to those included in the **AECP** contract at the request of the owner or his agent shall be billed and paid for at the standard service rate of R.F. MacDonald Co.

**SECTION I**  
**COMPLETE BOILER CLEANING**  
**AND INSPECTION SERVICE**

R.F. MacDonald Co. agrees to provide all labor and tools to perform the following work annually.

- Open, clean and brush fireside tubes of boiler with our power equipment, clean furnace and wire wheel rear tube sheet as required.
- Open, clean and inspect low water cut-off assemblies and piping inspection plugs. Replace w/ bull plugs if needed. Flush water column, control line and waterside removing loose scale, mud and debris. (Recommend waterside cleaning at additional cost if hard and/or excessive scale is present.)
- Check MacDonnell and Miller float controls for wear (M&M recommends head replacement every 5 years regardless of condition of unit. (Not included, quoted separately)
- Check for globe valves and proper drain piping on all column blow down lines.
- Check for Mercury switches and replace at customers discretion. Additional PO or authorization required
- Check for proper code stamping.
- Clean and rebuild Penberthy high pressure sight glasses if equipped and dirty.
- Remove Warrick probes, if equipped, clean, inspect high temp wire for wear and check for proper operation.
- Check blow down valves and piping for wear.
- Replace gauge glass and gauge glass valves on water column if required. (Does not include Penberthy sight glasses)
- Replace tri-cock valves or replace with plugs at customers discretion.
- Inspect refractory, point up (seal cracks) and wash-coat all refractory surfaces.
- Paint all hand hole plates and man way plate with Cleaver Brooks high temp aluminum paint.
- Fill unit and test for leaks.
- Check safety relief devices for correct application and setting, operation and wear. (RF MacDonald Co recommends replacing/overhauling safety relief valves annually.)



City of Lodi. Quote CL-AM04162012  
April 16, 2012  
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- Seal and close fireside of boiler using all new gaskets (Cleaver Brooks Boilers will be all genuine Cleaver Brooks Parts).
- Replace door bolts and nuts as needed. Apply hi-temp anti-seize to all threads
- Touch up door and door bolts with Cleaver Brooks Enamel.
- Check burner pilot and main flame ignition.
- Each boiler/burner to be checked and calibrated for optimum air/fuel mixture for each fuel and adjusted to its maximum efficiency level throughout entire modulation range. Flue gas analysis includes the monitoring of temperature, O<sub>2</sub>, CO, NO<sub>x</sub> and excess air and will be in a format to comply with the **SJVUAPCD Monthly Monitoring** requirement. (worn controls, metering valves, linkage or affiliated equipment replacements, if required, is not included but is available at 15% discount on parts).
- **HAWK ICS** Flash Card back-up of Controls and Panelview as applicable
- Work to be done on a regular workday basis (Monday-Friday). Additional cost for weekend or Holiday work will be billed separately unless part of and noted in this contract.
- All work will be performed by **R.F. MacDonald Co.'s own boiler technicians and is guaranteed to be first class in quality and workmanship.**
- The boiler room shall be left in the same clean condition as existed prior to start of the work.
- **A field engineer's checklist and report will be submitted upon completion of work.**

This proposal does not include any extra labor and materials that may be required to correct any condition pre-existing or not evident at the time of the inspection. No extra work will be performed without prior authorization.





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April 16, 2012  
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**SECTION II**  
**PERIODIC PREVENTATIVE MAINTENANCE AND**  
**FINE TUNING SERVICE PROGRAM**

R.F. MacDonald Co. agrees to provide the following applicable semi-annual services as indicated in the **AIECP** contract.

- Check flame failure safeguard control for pilot and main flame ignition.
- Check operation of blower motor and control circuitry.
- Check operation and adjust all linkages, belts and pulleys in accordance with factory specifications.  
(As applicable)
- Check operation of gas valves and vents.
- Check operation and adjust all boiler operating, pressure and temperature limits, stack oxygen transmitters (if present) and running interlocks.
- Check operation of low water controls on hot water closed systems. Draw down water column and check low water controls and/or feed water pump control on steam systems.
- Combustion and efficiency testing to be monitored and recorded at firing rates or of 20%, 50%, 75% & 100% of boiler/burner capacity when applicable. Combustion efficiency will be calculated and recorded at each position and will be in a format to comply with the **SJVUAPCD Monthly Monitoring** requirement.
- Upon completion of full testing, our engineers report will be submitted for your review.



City of Lodi. Quote CL-AM04162012  
 April 16, 2012  
 Page 6 of 8

### **AACP CONTRACT**

This contract shall pertain only to the following equipment.

	Make	Model No.	Serial No.	AACP Section I	AACP Section II (1ea)	Annual Price
Boiler No. 1	Cleaver Brooks	CB700-50	L96460	\$2,750	\$900	\$3,650
Boiler No. 2	Cleaver Brooks	CB700-50	L97261	\$2,750	\$900	\$3,650
Boiler No. 3	Cleaver Brooks	CBLE700-50	OL106106	\$2,850	\$900	\$3,750

Grand Total for **all boilers (3)**.....\$11,050.00

Payment Terms: On approval of credit, net 30 days from date of acceptance.

Note:

1. Contract to become effective upon the date of acceptance.
2. Initial service will be scheduled after receipt of purchase order.
3. Annualized monthly payments can be arranged if desired
4. Cancellation charges will be 50% of the balance of the contract

Company Name: \_\_\_\_\_

Accepted by: \_\_\_\_\_

Date: \_\_\_\_\_ Title: \_\_\_\_\_

Purchase Order #: \_\_\_\_\_

Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_

If you have any questions don't hesitate to contact me.

Sincerely,

Anthony Marino  
 Aftermarket Sales  
**R.F. MacDonald Co.**



May 7, 2012

## SALE AND PAYMENT TERMS AND CONDITIONS

The following sets forth the sale and payment terms and condition policies of R.F. MacDonald Co. It constitutes the general agreement between R.F. MacDonald Co. ("R.F. MacDonald Co.", the "Company" or "we") and you, its customer, under which products, service and parts are sold, credit is extended and payments are expected.

This policy supersedes all previous sales and credit, payment terms and conditions, and finance policies issued by R.F. MacDonald Co. and shall remain in effect until further notice. The company reserves the right to change this policy and agreement at any time.

### EXTENSION OF CREDIT

Credit is one of the most important services R.F. MacDonald Co. offers to you as a customer. An open line of credit is established for you based upon your needs, financial strength, and history of meeting your credit obligations.

In order to insure you the best possible prices and service, we must enforce a credit and collections policy based upon sound business principals and good judgment.

### INVOICING AND PAYMENT TERMS

**Payment Terms** are 25% down payment, balance Net 30 (upon approval of credit) on all invoices unless other arrangements are made in advance of shipment. When opening a new account with an order, the Company may require payment with the initial order so as not to delay shipments while credit references and financial information are being reviewed. We reserve the right to suspend or terminate any further performance under this agreement or otherwise in the event payment is not made when due. **Quotes are valid for 30 days. Equipment will not be started up unless 90% of the purchase price of the equipment has been paid.**

**Shipment Terms** Unless otherwise specified in writing signed by an authorized representative of the Company, all shipments are F.O.B. the manufacturer's factory or R.F. MacDonald Co. warehouse as applicable. Title to the merchandise shall pass to the buyer upon delivery to the carrier at the F.O.B. point and thereafter all risk of loss or damage shall be the buyer's.

**Service Charges** We reserve the right to take action to collect any invoice which is not paid when due. We also assess a late payment SERVICE CHARGE on the day following the due date and monthly thereafter against all amounts remaining unpaid on each such date. Subject to any limitations that may be imposed by applicable law, the amount of this charge is 1½% of the amount remaining unpaid on each such date.

This policy will be applied to customers who permit their account to become delinquent. It is your responsibility to notify R.F. MacDonald Co. of any extenuating circumstances that may affect your payment and work out a solution. Please know that our interest lies not in collecting a service charge, but in receiving timely payments of your invoice.

### IN WARRANTY MATERIALS AND DISCLAIMER OF WARRANTIES

You will rely solely on the warranty provided by the manufacturer. Your sole and exclusive remedy for breach of warranty shall be as provided in the manufacturer's standard warranty unless otherwise specifically expressed in writing.

**You will be invoiced in the regular manner for all materials and parts even though it may be an in-warranty transaction. Credit will be issued promptly on our receipt of proof of return, and, as long as the return is within the prescribed time limit and has been properly authorized. Please note that withholding payment of any invoice in anticipation of an in-warranty credit is not consistent with our terms of sale.**

R.F. MacDonald Co. makes no warranty expressed or implied of any kind. We make no claim of fitness or merchantability or any other warranty, expressed or implied, nor is anyone else, whether employed by R.F. MacDonald Co., or not, authorized to do so on our behalf. We specifically disclaim the warranty of merchantability and the warranty of fitness

**For any items or components proposed as a substitute to specified items, it is understood that seller makes no guarantee that the products submitted will be accepted by the approving authority.**



# R.F. MacDonald Co.

May 7, 2012

In no event shall R.F. MacDonald Co. be liable to you or any person, corporation or other type of legal entity for any special, direct, indirect, incidental, liquidated or consequential damage of any kind, including but not limited to, loss of products, loss of time, loss of use, loss of production, loss of savings or revenues, cost of replacement goods, labor costs or other charges in connection with product use or malfunction, the repair or replacement of defective parts whether such claims are alleged in strict liability, negligence, tort, contract or otherwise and even if R.F. MacDonald Co. is informed in advance of the possibility of such damages.

## CLAIMS

You are responsible for inspecting merchandise on receipt and for filing claims with the carriers for damage or loss. All claims for shortages and damages must be made in writing to the carriers within ten (10) days of receipt. We suggest you call the carrier immediately upon noticing any possible freight related damage and arrange for inspection before proceeding with unpacking. Photographs taken while the delivery truck is still on sight are recommended if possible.

Under no circumstances may you withhold payment or charge the Company for freight or warranty related claims.

No claim for expenses incurred for corrective work done on merchandise provided by the Company will be considered or accepted unless specifically agreed to in writing, in advance of the work being done, by an authorized manager of the Company.

## INFORMATION AND ASSISTANCE

If at any time you have a question on an invoice from the Company, a call or note to our accounting department will bring prompt action toward getting the problem resolved.

If it becomes necessary, at R.F. MacDonald Co.'s discretion, to take legal action in order to collect your account, R.F. MacDonald Co. shall be entitled to recover, in addition to any other recovery, its court costs, reasonable attorney's fees and all other collection expenses.

If you have any questions regarding this policy, please contact our office.

We appreciate your business and look forward to providing you with reliable equipment, parts and service.

**Please acknowledge below your receipt and agreement to the provisions of this policy statement.**

### **Return the original to:**

R.F. MacDonald Co.  
1549 Cummins Dr.  
Modesto, CA 95358  
Phone: (209) 576-0726  
Fax: (209) 576-1312

**APPLICABLE LAW:** This agreement shall be governed by the substantive laws of the State of California

Acknowledged and Agreed To:

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Date: \_\_\_\_\_

RESOLUTION NO. 2012-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING AMENDMENT NO. 2 TO PROFESSIONAL  
SERVICES AGREEMENT WITH R.F. MACDONALD  
COMPANY FOR BOILER CLEANING AND  
INSPECTION AT WHITE SLOUGH WATER POLLUTION  
CONTROL FACILITY

=====

WHEREAS, the City Manager executed a professional services agreement with R.F. MacDonald Company, of Modesto, on March 13, 2012, in the amount of \$19,750 for the re-tube of Cleaver Brooks Boiler CB200-50 at the White Slough Water Pollution Control Facility, and on May 2, 2012, City Council authorized Amendment No. 1, in the amount of \$11,495, for repair of a cracked Morrison tube that was discovered during the re-tube work; and

WHEREAS, periodic inspection of the boilers is required in order to remain compliant with permits issued by the San Joaquin County Air Pollution Control District, and the inspection is now due; and

WHEREAS, staff recommends approval of Amendment No. 2 to the R.F. MacDonald Company professional services agreement to perform the required inspections, resulting in a net increase in contract value of \$11,050.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve Amendment No. 2 to the Professional Services Agreement with R.F. MacDonald Company, of Modesto, California, for boiler cleaning and inspection at White Slough Water Pollution Control Facility, in the amount of \$11,050; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute Amendment No. 2 on behalf of the City of Lodi.

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2012-\_\_\_\_\_



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Lease Agreement with MetroPCS California for 114 North Main Street

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Public Works Director

---

**RECOMMENDED ACTION:** Adopt resolution authorizing City Manager to execute lease agreement with MetroPCS California for 114 North Main Street.

**BACKGROUND INFORMATION:** MetroPCS California has requested a lease of City property located at 114 North Main Street for the purpose of installing communication equipment. MetroPCS will be leasing space on the water tower, as well as ground space for the operation of a wireless communication site, as shown on Exhibit B of the attached lease agreement. MetroPCS will obtain all required permits and pay all costs involved with the construction of its facilities and installation of its equipment.

MetroPCS will be paying \$1,500 a month for rent, with a 3 percent escalator every year. The term of the lease agreement is five years, commencing on the date MetroPCS begins construction of its facilities, and contains the option to extend for four additional five-year terms.

**FISCAL IMPACT:** The lease will provide the City with General Fund revenue of approximately \$18,000 annually. MetroPCS will also make a one-time capital contribution of \$35,000.

**FUNDING AVAILABLE:** Not applicable.

---

F. Wally Sandelin  
Public Works Director

Prepared by Rebecca Areida-Yadav, Management Analyst

FWS/RAY/pmf

Attachment

cc: Susan Bjork, Supervising Budget Analyst

---

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

## COMMUNICATIONS SITE LEASE AGREEMENT

THIS COMMUNICATIONS SITE LEASE AGREEMENT ("Lease Agreement") dated as of May \_\_\_\_\_, 2012 is made by and between MetroPCS California, LLC, a Delaware limited liability company ("Lessee") and the CITY OF LODI, a municipal corporation ("Lessor" or the "City").

### R E C I T A L S

This Lease Agreement is entered into based upon the following facts, circumstances and understandings:

A. Lessor owns certain real property legally described in Exhibit "A" attached hereto and commonly known as 114 N. MAIN ST., LODI, CA 95240; Assessor's Parcel Number 043-084-11 ("Lessor's Real Property"). Lessee desires to lease a portion of Lessor's Real Property together with any necessary easements over other portions of Lessor's Real Property and/or shared use of Lessor's easements over other real property necessary for Lessee's access and utilities to the leased area (altogether the "Premises"), as described on Exhibit "B" attached hereto. Lessor represents and warrants that it has the complete right and authority to grant the rights set forth herein and that Lessor has full rights of ingress to and egress from the Premises from a public roadway.

B. Lessee desires to construct and operate a wireless communications site at the Premises.

C. Based on the foregoing facts, circumstances and understandings set forth herein and on the terms and conditions set forth below, Lessor is willing to lease the Premises to Lessee for Lessee's proposed use subject to the terms and conditions of this Lease Agreement.

**WHEREFORE, in consideration of the facts, circumstances and understandings set forth above and the terms and conditions set forth herein, the parties, intending to be legally bound, hereto agree as follows:**

1. **Grant of Lease.** Lessor hereby leases to Lessee the Premises for Lessee's proposed use, subject to the following terms and conditions for the Term.

2. **Permitted Uses.** The Premises may be used by Lessee for the operation of a wireless communications site. Under this Lease Agreement, Lessee may install, place, use and operate on the Premises such antennas, radio transmitting and receiving equipment, conduits, wires, batteries, back-up generators, utility lines and facilities, equipment cabinets, storage facilities, telephone facilities, microwave equipment, and related equipment (collectively "Lessee's Facilities") as Lessee deems necessary for the operation of its wireless communications site at the Premises. Further, Lessee may perform construction, maintenance, repairs, additions to, and replacement of Lessee's Facilities as necessary and appropriate for its ongoing business and has the right to do all work necessary to prepare, modify and maintain the Premises to accommodate Lessee's Facilities and as Lessee determines is required for Lessee's communications operations at the Premises.

3. **Conditions Precedent: Prior Approvals.** This Lease Agreement is conditioned upon Lessee obtaining all governmental licenses, permits and approvals enabling Lessee to construct and operate wireless communications facilities on the Premises without conditions which are not standard or typical for premises where wireless communications facilities are located. Lessor agrees to cooperate with Lessee's reasonable requests for Lessor's signatures as real property owner on permit applications, for allowing site inspections by governmental agencies required in connection with reviewing permit applications, and for assistance in obtaining such necessary approvals, provided that such cooperation and assistance shall be at no expense to Lessor.

4. **Term.** The term of this Lease Agreement ("Term") shall be five (5) years commencing on the date (a) Lessee begins construction of Lessee's Facilities on the Premises or (b) twelve (12) months from the last date of execution by a party to this Lease Agreement, as reflected on the signature page below, whichever occurs first ("Commencement Date"). Lessee shall promptly deliver written notice to Lessor of the Commencement Date. Lessee shall have the right to extend the Term of this Lease Agreement for four (4) additional terms (each a "Renewal Term") of five (5) years each. The terms and conditions for each Renewal Term shall be the same terms and conditions as in this Lease Agreement, except that the Rent shall be increased as set forth hereinbelow. This Lease Agreement shall automatically be extended for each successive five (5) year Renewal Term unless either party notifies the other in writing of its intention not to extend this Lease Agreement at least one year prior to the expiration of the first Term or any Renewal Term.

5. **Rent.**

(a) Within forty-five (45) days of the Commencement Date, Lessee shall pay Lessor, as rent, the sum of ONE THOUSAND, FIVE HUNDRED and no/100 (\$1,500.00) ("Rent") per month. Rent shall be payable on the first day of each month, in advance, to Lessor or Lessor's alternate payee specified in Section 22, Notices and Deliveries. If the Commencement Date of this Lease Agreement is other than the first day of a calendar month, Lessee may pay on the first day of the Term the prorated Rent for the remainder of the calendar month in which the Term commences, and thereafter Lessee shall pay a full month's Rent on the first day of each calendar month, except that payment shall be prorated for the final fractional month of this Lease Agreement, or if this Lease Agreement is terminated before the expiration of any month for which Rent should have been paid. Rent shall be increased on each anniversary of the Commencement Date by an amount of three percent (3%) of the Rent paid during the year.

(b) Within forty-five (45) days of the Commencement Date, Lessee shall pay Lessor a one-time capital contribution in the amount Thirty Five Thousand Dollars (\$35,000).

6. **Due Diligence Contingency and Pre-Commencement Date Access to Premises.** Lessee shall have the right (but not the obligation) at any time following the full execution of this Lease Agreement and prior to the Commencement Date, to enter the Premises for the purpose of making necessary inspections, taking measurements and conducting engineering surveys (and soil tests where applicable) and any other reasonably necessary tests to determine the suitability of the Premises for Lessee's Facilities ("Due Diligence"), and for the purpose of preparing the Premises for the installation or construction of Lessee's Facilities. During any Due Diligence activities or pre-construction work,



Lessee shall have insurance which covers such activities as set forth in Section 16, Insurance. Lessee will notify Lessor of any proposed tests, measurements or pre-construction work and will coordinate the scheduling of such activities with Lessor. If in the course of its Due Diligence Lessee determines that the Premises are unsuitable for Lessee's contemplated use, then Lessee shall have the right to terminate this Lease Agreement prior to the Commencement Date without any further liability or obligation to Lessor by delivery of written notice of termination to Lessor as set forth in Section 13, Termination.

7. **Ongoing Access to Premises.** Throughout the Term and any Renewal Term of this Lease Agreement, Lessee shall have the right of access without escort to the Premises for its employees and agents twenty-four (24) hours a day, seven (7) days per week, at no additional charge to Lessee. In exercising its right of access to the Premises herein, Lessee agrees to cooperate with any reasonable security procedures utilized by Lessor at Lessor's Real Property and further agrees not to unduly disturb or interfere with the business or other activities of Lessor or of other tenants or occupants of Lessor's Real Property. Lessor shall maintain all existing access roadways or driveways extending from the nearest public roadway to the Premises in a manner sufficient to allow for Lessee's access to the Premises. Lessor shall be responsible for maintaining and repairing such roadways and driveways at Lessor's sole expense, except for any damage caused by Lessee's use of such roadways or driveways. If Lessee causes any such damage, Lessee shall promptly repair the same at its sole expense. Except those constructed by Lessee, Lessor, not Lessee, shall be responsible for the maintenance and compliance with laws of all towers and structures located on the Premises, including compliance with Part 17 of the Federal Communications Commissions' ("FCC") rules.

8. **Lessee's Work, Maintenance and Repairs.** All of Lessee's construction and installation work at the Premises shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Lessee shall submit copies of the site plan and specifications (the "Plans") to the Lessor for prior approval, which approval will not be unreasonably withheld, conditioned or delayed. Lessor shall give such approval or provide Lessee with its requests for changes within five (5) business days of Lessor's receipt of Lessee's Plans. If Lessor does not provide such approval or request for changes within such five (5) business day period, Lessor shall be deemed to have approved the Plans. Lessor shall not be entitled to receive any additional consideration in exchange for giving its approval of Lessee's Plans. Lessee shall maintain Lessee's Facilities and the Premises in neat and safe condition in compliance with all applicable codes and governmental regulations. Lessee shall not be required to make any repairs to the Premises except for damages to the Premises caused by Lessee, its employees, agents, contractors or subcontractors. Upon the expiration, cancellation or termination of this Lease Agreement, Lessee shall surrender the Premises in good condition, less ordinary wear and tear and may, at Lessor's option remove Lessee's Facilities. Lessee's obligations under this paragraph regarding removal of Lessee's Facilities shall survive the termination of this Agreement.

9. **Title to Lessee's Facilities.** Title to Lessee's Facilities and any equipment placed on the Premises by Lessee shall be held by Lessee. All of Lessee's Facilities shall remain the property of Lessee and are not fixtures. Lessee has the right to remove all Lessee's Facilities at its sole expense on or before the expiration or termination of this Lease Agreement. Lessor acknowledges that Lessee may enter into financing arrangements including promissory notes and financial and security agreements for the financing of Lessee's Facilities (the "Collateral") with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith, Lessor (i) consents to the installation of the Collateral to the extent that the Collateral is part of the approved Lessee's Facilities; (ii) disclaims any interest in the Collateral, as fixtures or otherwise,

whether arising at law or otherwise, including, but not limited to any statutory landlord's lien; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings. However, no financing agreement shall include any rights in or to the Premises except for those rights established by this Agreement.

**10. Utilities.** Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on or near the Premises (including, but not limited to the installation of emergency back-up power). Subject to Lessor's approval of the location, which approval shall not be unreasonably withheld, conditioned, or delayed, Lessee shall have the right to place utilities on (or to bring utilities across) Lessor's Real Property in order to service the Premises and Lessee's Facilities. Upon Lessee's request, Lessor shall execute recordable easement(s) evidencing this right. Lessee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Lessee's Facilities.

**11. Interference with Communications.** Lessee's Facilities and operations shall not interfere with the communications configurations, frequencies or operating equipment which exist on Lessor's Real Property on the effective date of this Lease Agreement ("Pre-existing Communications"), and Lessee's Facilities and operations shall comply with all non-interference rules of the FCC. Upon written notice from Lessor of apparent interference by Lessee with Pre-existing Communications, Lessee shall have the responsibility to promptly terminate such interference or demonstrate to Lessor with competent information that the apparent interference in fact is not caused by Lessee's Facilities or operations. Lessor shall not, nor shall Lessor permit any other tenant or occupant of any portion of Lessor's Real Property to, engage in any new or altered activities or operations which interfere with the communications operations of Lessee described in Section 2, above. Such new or altered uses that cause interference with Lessee's communications operations shall be deemed a material breach by Lessor, and Lessor shall have the responsibility to promptly terminate said interference. In the event any such new or altered uses that cause interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to Lessee, and therefore Lessee shall have the right to bring a court action to enjoin such interference or to terminate this Lease Agreement immediately upon notice to Lessor. Lessor agrees to incorporate equivalent provisions regarding non-interference with Pre-existing Communications into any subsequent leases, licenses or rental agreements with other persons or entities for any portions of Lessor's Real Property.

**12. Taxes.** Lessee shall pay personal property taxes assessed against Lessee's Facilities, and Lessor shall pay when due all real property taxes and all other taxes, fees and assessments attributable to the Premises and this Lease Agreement.

**13. Termination.** This Lease Agreement may be terminated by Lessee, in its sole discretion, effective immediately without further liability by delivery of written notice thereof to Lessor prior to the Commencement Date for any reason resulting from Lessee's Due Diligence, or if a title report obtained by Lessee for Lessor's Real Property shows any defects of title or any liens or encumbrances which may adversely affect Lessee's use of the Premises for Lessee's intended use, or for any other or no reason. This Lease may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default; (ii) by Lessee, in its sole discretion, if it does not obtain licenses, permits or other approvals necessary to

the construction or operation of Lessee's Facilities ("Permits"), is unable to obtain such Permits without conditions which are not standard or typical for premises where wireless communications facilities are located or is unable to maintain such licenses, permits or approvals despite reasonable efforts to do so; (iii) by Lessee, in its sole discretion, if Lessee is unable to occupy or utilize the Premises due to ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of frequencies; or (iv) by Lessee if Lessee determines that the Premises are not appropriate or suitable for Lessee's operations for economic, environmental or technological reasons, including, without limitation, signal strength or interference. Other than as stated herein, Lessor shall not have the right to terminate, revoke or cancel this Lease Agreement.

**14. Destruction of Premises.** If the Premises or Lessor's Property is destroyed or damaged so as in Lessee's judgment to hinder its effective use of Lessor's Property for the ongoing operation of a wireless communications site, Lessee may elect to terminate this Lease Agreement without further liability of Lessee as of the date of the damage or destruction by so notifying Lessor no more than thirty (30) days following the date of damage or destruction. In such event, all rights and obligations of the parties which do not survive the termination of this Lease Agreement shall cease as of the date of the damage or destruction.

**15. Condemnation.** If a condemning authority takes all of Lessor's Real Property, or a portion which in Lessee's sole opinion is sufficient to render the Premises unsuitable for Lessee's ongoing operation of a wireless communications site, then this Lease Agreement shall terminate without further liability of Lessee as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make a claim against the condemning authority for just compensation recoverable under applicable condemnation law. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain shall be treated as a taking by a condemning authority.

**16. Insurance Requirements.** Lessee shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the City as may be required by the Risk Manager of the City. In addition, the named insured on all such policies shall provide to the additional insureds identified herein any notices of cancellation of said insurance policies within 5 business days of receipt of such notice. Lessee shall, affirm under penalty of perjury that the required insurance on the project remains in place and said insurance has not been cancelled.

(a) Worker's Compensation - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of \$1,000,000.

(b) General Liability insurance with a minimum limit of liability per occurrence of \$3,000,000 for bodily injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual;

(c) Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and property damage. This insurance shall cover any automobile for bodily injury and property damage.

Lessee may satisfy the above requirements through a combination of its primary and umbrella/excess policies.

If at any time any of said policies shall be unsatisfactory to the City, as to form or substance, or if a company issuing such policy shall be unsatisfactory to the City, Lessee shall promptly obtain a new policy, and submit a certificate thereof as hereinabove provided. Upon failure of Lessee to furnish, deliver or maintain such certificates as above provided, this Agreement, at the election of the City, may be forthwith declared suspended or terminated. Failure of Lessee to obtain and/or maintain any required insurance shall not relieve Lessee from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of Lessee concerning indemnification. The City, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the City, its agents, officers, employees, and volunteers for losses arising from work performed by Lessee for the City. Lessee's insurance policy(ies) shall include a provision that the coverage is primary as respects the City; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager. Lessee must deliver certificates evidencing existence of the insurance listed above to the City prior to the time the contract is signed.

LESSEE shall provide CITY with separate endorsements evidencing proof of the CITY's additional insured status as to both the general liability and automobile liability insurance policies. In addition, LESSEE shall provide CITY with a Workers Compensation subrogation waiver by way of a separate endorsement. All endorsements referenced above must include the applicable policy number.

For any claims related to this project, Lessee's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the LESSEE'S insurance and shall not contribute with it.

Lessee agrees to provide written notice of such cancellation to the City's Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240

**17. Assignments or Transfers.** Lessor may assign or transfer this Lease Agreement to any person or entity without any requirement for prior approval by Lessee. Lessee may assign or transfer this Lease Agreement without prior approval by Lessor to any of Lessee's partners, shareholders, members, subsidiaries, or affiliates, to any entity in which Lessee or any of its affiliates holds an ownership interest, or to a person or entity acquiring by purchase, merger or operation of law a majority of the value of the assets of Lessee. Lessee shall provide Lessor with written notice of such assignment within ninety (90) days of such assignment. Lessee shall not assign or transfer this Lease Agreement to any other person or entity without the prior written approval of Lessor, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding anything to the contrary contained in this Agreement, Lessee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this

Agreement to any financing entity, or agent on behalf of any financing entity to whom Lessee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by loans, bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

**18. Intentionally Deleted.**

**19. Nondisturbance and Quiet Enjoyment; Subordination; Estoppel Certificates.**

(a) Except as set forth herein, so long as Lessee is not in default under this Lease Agreement, Lessee shall be entitled to quiet enjoyment of the Premises during the term of this Lease Agreement or any Renewal Term, and Lessee shall not be disturbed in its occupancy and use of the Premises.

(b) This Lease Agreement shall be subordinate to each and every deed of trust, mortgage or other security instrument which may now or hereafter affect Lessor's Real Property and to any renewals, extensions, supplements, amendments, modifications or replacements thereof. In confirmation of such subordination, Lessee shall execute and deliver promptly any certificate of subordination that Lessor may reasonably request, provided that such certificate acknowledges that this Lease Agreement remains in full force and effect, recognizes Lessee's right to nondisturbance and quiet enjoyment of the Premises so long as Lessee is not in default under this Lease Agreement, only contains true and accurate statements and Lessee's liability shall be capped at the remaining rent under this Lease Agreement. If any mortgagee or lender succeeds to Lessor's interest in Lessor's Real Property through a foreclosure proceeding or by a deed in lieu of foreclosure, Lessee shall attorn to and recognize such successor as Lessor under this Lease Agreement.

(c) At any time upon not less than ten (10) days' prior written notice by Lessor, Lessee shall execute, acknowledge and deliver to Lessor or any other party specified by Lessor a statement in writing certifying that this Lease Agreement is in full force and effect, if true, and the status of any continuing defaults under this Lease Agreement.

**20. Indemnifications.**

(a) **Lessee's Indemnity.** Lessee hereby agrees to indemnify and hold Lessor and Lessor's elected and appointed officers, directors, employees, agents, contractors or subcontractors harmless from and against any and all losses, claims, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) and injuries (including personal injuries or death) arising from or in connection with Lessee's use, operation, maintenance or repair of Lessee's Facilities at the Premises or access over Lessor's Real Property or Lessee's shared use of Lessor's easements for access to the Premises, except those resulting from the negligence or willful misconduct of Lessor or Lessor's officers, directors, partners, employees, agents, contractors or subcontractors.

(b) **Lessor's Indemnity.** Lessor hereby agrees to indemnify and hold Lessee and Lessee's officers, directors, partners, shareholders, employees, agents, contractors or subcontractors harmless from and against any and all losses, claims, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) and injuries (including personal injuries or death) arising from or in

connection with Lessor's use, operation, maintenance or repair of improvements on Lessor's Real Property, any violation of governmental regulations relating to the Premises and any towers used by Lessee and owned by Lessor (including the lighting or painting for aviation pathways), except those resulting from the negligence or willful misconduct of Lessee or Lessee's officers, directors, partners, shareholders, employees, agents, contractors or subcontractors.

(c) **Special Damages.** Notwithstanding any other provision of this Lease Agreement, neither party shall be liable to the other for consequential damages, damages for lost profits, exemplary or punitive damages or other special damages, whether in tort, contract or equity.

(d) **Survival of Indemnity Provisions.** The indemnity provisions of this section shall survive the expiration, cancellation or expiration of this Lease Agreement for a period of one (1) year and any claims for indemnification under this Section 20 shall be brought within that period.

21. **Hazardous Materials.** Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material (as defined below) on, under, about or within the Lessor's Real Property in violation of any law or regulation. Lessee agrees to defend, indemnify and hold harmless Lessor and Lessor's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. Lessor represents, warrants and agrees that Lessor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within Lessor's Real Property in violation of any law or regulation. Lessor agrees to defend, indemnify and hold harmless Lessee and Lessee's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any (i) use or disposal of any known Hazardous Material by Lessor on the Premises or (ii) breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which Lessor's Real Property is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Agreement.

22. **Notices and Deliveries.** Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, confirmed fax, or reliable overnight delivery service to the address of the respective parties set forth below:

Lessor: CITY OF LODI  
P. O. BOX 3006  
221 W. PINE ST.  
LODI, CA 95241-1910  
Attn: RAD BARTLAM, CITY MANAGER  
Telephone: (209) 333-6700  
Facsimile: (209) 333-6710  
Federal Taxpayer ID Number: \_\_\_\_\_

Lessee: MetroPCS California, LLC  
785 Orchard Dr., Suite 200  
Folsom, CA 95630

With a copy to: MetroPCS California, LLC  
2250 Lakeside Blvd.  
Richardson, TX 75082  
Attn: Property Manager  
Telephone: 214-265-2550  
Facsimile: 866-457-4126

Lessor or Lessee may from time to time designate any other address for notices or deliveries by written notice to the other party.

**23. Miscellaneous.**

(a) **Severability.** If any provision of the Lease Agreement is held to be invalid or unenforceable by a court of competent jurisdiction with respect to any party, the remainder of this Lease Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, each provision of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law, and the parties shall negotiate in good faith to amend this Lease Agreement to retain the economic effect of the invalid or unenforceable provisions.

(b) **Binding Effect.** Each party represents and warrants that said party has full power and authority, and the person(s) executing this Lease Agreement have full power and authority, to execute and deliver this Lease Agreement, and that this Lease Agreement constitutes a valid and binding obligation of each party, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditor's rights generally and by general equitable principles (whether enforcement is sought in proceedings in equity or at law). This Lease Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(c) **Waivers.** No provision of this Lease Agreement shall be deemed to have been waived by a party unless the waiver is in writing and signed by the party against whom enforcement of the waiver is attempted. No custom or practice which may develop between the parties in the implementation or administration of the terms of this Lease Agreement shall be construed to waive or lessen any right to insist upon strict performance of the terms of this Lease Agreement.

(d) **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State in which the Premises are located.

(e) **Attorneys' Fees and Costs.** The prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorneys' fees and costs and court costs.

(f) **Survival.** Terms and conditions of this Lease Agreement which by their sense and context survive the termination, cancellation or expiration of this Lease Agreement will so survive.

(g) **Memorandum of Lease Agreement.** Lessor acknowledges that a Memorandum of Lease Agreement substantially in the form annexed hereto as Exhibit C will be recorded by Lessee in the Official Records of the County where the Property is located.

(h) **Entire Agreement; Amendments.** This Lease Agreement constitutes the entire agreement and understanding between the parties regarding Lessee's lease of the Premises and supersedes all prior and contemporaneous offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease Agreement must be in writing and executed by duly authorized representatives of both parties.

(i) **No Presumptions Regarding Preparation of Lease Agreement.** The parties acknowledge and agree that each of the parties has been represented by counsel or has had full opportunity to consult with counsel and that each of the parties has participated in the negotiation and drafting of this Lease Agreement. Accordingly it is the intention and agreement of the parties that the language, terms and conditions of this Lease Agreement are not to be construed in any way against or in favor of any party hereto by reason of the roles and responsibilities of the parties or their counsel in connection with the preparation of this Lease Agreement.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be executed by their duly authorized representatives on the dates set forth below and acknowledge that this Lease Agreement is effective as of the date first above written.

**LESSOR:**

**CITY OF LODI, a municipal corporation**

By: \_\_\_\_\_

Name: Konradt Bartlam, City Manager

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

Name: Randi Johl, City Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Name: D. Stephen Schwabauer, City Attorney

**LESSEE:**

**MetroPCS California, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
(Signature)

Name: Corey A. Linquist

Title: Vice President & General Manager

Date: 3 May 2012

**EXHIBIT A**

**DESCRIPTION OF LESSOR'S REAL PROPERTY**

to the Lease Agreement dated \_\_\_\_\_, 2012, by and between the CITY OF LODI, a municipal corporation, as Lessor, and MetroPCS California, LLC, a Delaware limited liability company, as Lessee.

Lessor's Property of which Premises are a part is described as follows:

All that real property situated in the City of Lodi, County of San Joaquin, State of California and being more particularly described as follows:

Lot numbers One, Two, Three and Four in Block Number 29, as said Lots are designated upon that certain map entitled, "Mokelumne," filed for record in the office of the County Recorder of San Joaquin County on August 25, 1869 in Volume 2 of Maps, at Page 12, San Joaquin County Records.

Assessor's Parcel Number: 043-084-11

## EXHIBIT B

### DESCRIPTION OF PREMISES

to the Lease Agreement dated \_\_\_\_\_, 2012, by and between the CITY OF LODI, a municipal corporation, as Lessor, and MetroPCS California, LLC, a Delaware limited liability company, as Lessee.

The Premises consist of those specific areas described/shown below or attached where Lessee's communications antennae, equipment and cables occupy Lessor's Real Property. The Premises and the associated utility connections and access, including easements, ingress, egress, dimensions, and locations as described/shown, are approximate only and may be adjusted or changed by Lessee at the time of construction to reasonably accommodate sound engineering criteria and the physical features of Lessor's Real Property.

THE FOLLOWING ARE ATTACHED HERETO AND MADE A PART OF THIS EXHIBIT BY  
REFERENCE:

SHEET C-1: PLOT PLAN AND SITE TOPOGRAPHY

SHEET A-1: SITE PLAN

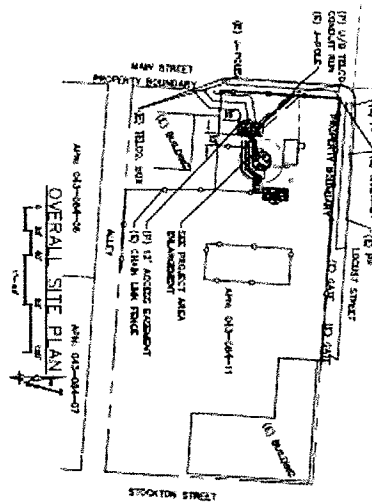
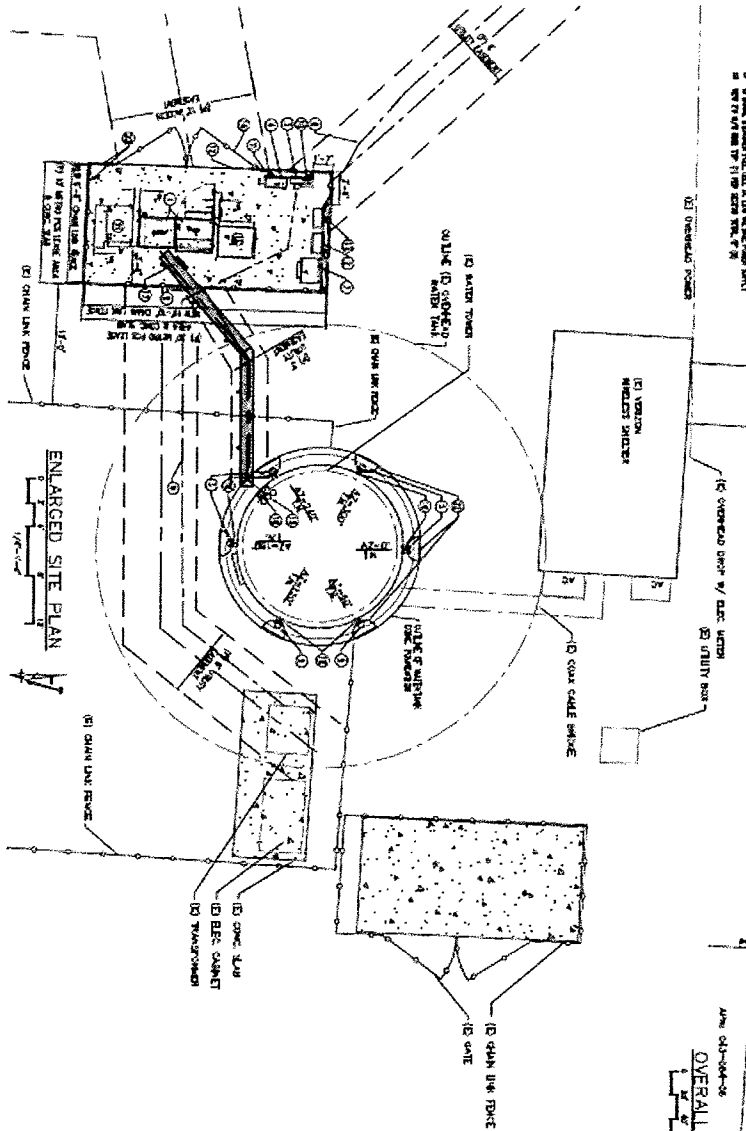
SHEET A-2: ELEVATION

*(A final drawing or copy of a property survey or site plan depicting the above shall replace this Exhibit B when initialed by Lessor or Lessor's designated agent and may be modified from time to time when initialed by both Lessor and Lessee.)*

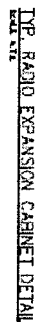
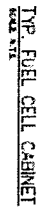
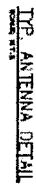
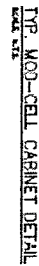


1. **THE STATE OF TEXAS, COUNTY OF DALLAS, ss. I, [Name], Clerk of the County, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears from the records of the County of Dallas, Texas.**
2. **WITNESSETH my hand and the seal of said County, this [Date] day of [Month], 19[Year].**
3. **CLERK OF THE COUNTY OF DALLAS, TEXAS.**
4. **NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS.**
5. **My commission expires on [Date].**
6. **NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS.**
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99. **My commission expires on [Date].**
100. **NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS.**

4. In addition to Dravot and Yarn, the respondents also used other drugs and types of equipment, including the following:



<b>114 N. MAIN ST</b> <b>LOCA. CA. 93110</b>		<b>5th fl. Sec. 112</b>
<b>REVISIONS</b>		
NO.	DESCRIPTION	DATE
1	ADD 100' DIA. TANK	10/1/81
2	ADD 100' DIA. TANK	10/1/81
3	ADD 100' DIA. TANK	10/1/81
4	ADD 100' DIA. TANK	10/1/81
5	ADD 100' DIA. TANK	10/1/81
6	ADD 100' DIA. TANK	10/1/81
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Page 16 of 18

**EXHIBIT C**  
**MEMORANDUM OF AGREEMENT**

CLERK: Please return this document to: MetroPCS California, LLC  
ADDRESS: 785 Orchard Dr., Suite 200  
Folsom, CA 95630  
Attn: Property Manager

This Memorandum of Agreement is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the CITY OF LODI, a municipal corporation, with an office at P. O. Box 3006, Lodi, CA 95241-1910 (hereinafter referred to as "Lessor"), and MetroPCS California LLC, a Delaware limited liability company, with an office at 785 Orchard Dr., Suite 200, Folsom, CA 95630 (hereinafter referred to as "Lessee").

1. Lessor and Lessee entered into a Communications Site Lease Agreement ["Agreement"] on the \_\_\_\_ day of May, 2012, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The term of the Agreement is for five (5) years commencing on the date (a) Lessee begins construction of Lessee's Facilities on the Premises or (b) twelve (12) months from the last date of execution by a party to the Lease Agreement, as reflected on the signature page, whichever first occurs ("Commencement Date") and terminating on the fifth anniversary of the Commencement Date, with FOUR (4) successive five (5) year options to renew.
3. The Land which is the subject of the Agreement is described in Exhibit A annexed hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

LESSOR:

LESSEE:

CITY OF LODI, a municipal corporation

MetroPCS California LLC, a Delaware limited liability company

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: COREY A. LINQUIST

Title: \_\_\_\_\_

Title: VICE PRESIDENT & GENERAL MANAGER

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

State of California

County of San Joaquin\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

State of California

County of SACRAMENTO

On May\_\_\_\_\_, 2012 before me, \_\_\_\_\_, Notary Public, personally appeared **COREY A. LINQUIST**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



RESOLUTION NO. 2012-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
AUTHORIZING CITY MANAGER TO EXECUTE LEASE  
AGREEMENT WITH METROPCS CALIFORNIA FOR  
114 NORTH MAIN STREET

=====

WHEREAS, MetroPCS California has requested a lease of City property located at 114 North Main Street for the purpose of installing communication equipment; and

WHEREAS, MetroPCS California will be paying \$1,500 a month for rent, with a 3% escalator every year; and

WHEREAS, the term of the lease agreement is five years, commencing on the date MetroPCS begins construction of their facilities, and contains the option to extend for four additional five-year terms.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a lease agreement with MetroPCS California for 114 North Main Street for the purpose of installing communication equipment.

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2012-\_\_\_\_\_



TM

## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Approving the Memorandum of Understanding Between the City of Lodi and the Boosters of Boys and Girls Sports (B.O.B.S.)

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Parks, Recreation and Cultural Services Interim Director

---

**RECOMMENDED ACTION:** Adopt resolution approving the Memorandum of Understanding between the City of Lodi and the Boosters of Boys and Girls Sports (BOBS.).

**BACKGROUND INFORMATION:** The BOBS is a nonprofit, community sports organization that has assisted the City in providing services to Lodi's young athletes since 1960. The services provided by the BOBS, and the roles and responsibilities of the BOBS and City, are outlined in a Memorandum of Understanding (MOU) that took effect in 1987 and has been revised several times.

To better serve the BOBS and the Department, a single, updated MOU is needed. The attached MOU, which incorporates and better defines previous agreements between the parties, was developed through cordial discussions between Parks, Recreation and Cultural Services staff, the City Attorney and BOBS members. The BOBS Board of Directors unanimously voted in favor of the MOU on May 9, 2012. It will take effect upon the City Council's approval.

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** Not applicable.

---

Jeff Hood  
Parks, Recreation and Cultural Services Interim Director

Attachments

cc: City Attorney  
Eddie Long, BOBS President

---

APPROVED: \_\_\_\_\_  
Konradt Bartlam, City Manager

June 6, 2012

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LODI PARKS, RECREATION AND CULTURAL SERVICES AND THE BOOSTERS OF BOYS AND GIRLS SPORTS REGARDING THE PROVISION OF SERVICES TO THE CITY AND LODI COMMUNITY

The following is a Memorandum of Understanding regarding the relationship between the Boosters of Boys and Girls Sports, a 501(c)3 non-profit organization (to be referred to as: **BOBS**) and the City of Lodi Parks, Recreation and Cultural Services (to be referred to as: **Department**), a department of the City of Lodi a municipal corporation.

This MOU supersedes the previous MOU titled "Department Policy Regarding Fees/Charges to B.O.B.S" dated March 22, 1988. All prior agreements between the parties, whether they cover topics similar to or different from this agreement are hereby terminated by mutual agreement. It is the intent of this agreement to reflect all terms establishing the party's relationship in this one document.

The BOBS exist as a distinct non-profit organization whose goal is to offer programs and provide financial and material resources for youth sports in Lodi. The Department and BOBS have had, and continue to have, a unique relationship enabling both entities to deliver cost effective and comprehensive youth sports programs in Lodi.

The parties agree to following terms:

- BOBS will provide its members to the Department to conduct various athletic programs throughout the year. All BOBS members services shall be voluntary and neither BOBS nor its members shall receive compensation for their services in their capacity as BOBS members.
- The Director of the Department shall be the authorized person to coordinate with the members of BOBS in their participation of the sports and recreation programs of the Department.
- The City will indemnify, defend and hold harmless BOBS members participating in the sports and recreation program of Department pursuant to this MOU, on the same terms and subject to the same limits and exceptions as a City Employee (See for example Government Code Section 995.2 and 825.). This paragraph shall not extend to concession stands operations which are required to be insured by BOBS as set forth below.
- The City will defend, indemnify and hold harmless BOBS, and its officers and directors from any liability, up to a maximum of \$250,000.00 by reason of injury to participants in BOBS directed, City sponsored sports and recreation programs, on the same terms and subject to the same limits and exceptions as a City Employee (See for example Government Code Section 995.2 and 825.) This paragraph shall not extend to concession stands operations which are required to be insured by BOBS as set forth below.
- BOBS has the right of first refusal to exclusively operate the food and beverage concession at Salas Park, Kofu Park, Zupo Field and at such other public places as may be permitted by the Director of the City's Parks, Recreation and Cultural Services Department. This right of first refusal shall not extend to non athletic events. The net proceeds received from the sale of food, beverage and merchandise at these concession stands shall be used by BOBS solely to carry on the Department's recreational

programs. BOBS shall account quarterly to the Parks and Recreation Commission for all concession operation income and expenses. Concession workers shall be BOBS employees for all purposes.

- BOBS agrees to maintain in full force during the time that they are operating food concession stands, a liability insurance policy in the minimum sum of \$1,000,000.00 which shall name, by endorsement, the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers as an additional insured and under which policy the insurer agrees to indemnify and hold the BOBS and City of Lodi harmless from and against all costs, expenses and liability arising out of or based upon any damages claimed by any person purchasing food from said concession stands. In addition to the additional named insured endorsement on BOBS' policy of insurance, said insurance policy shall be endorsed to include language that translates to: Such insurance as is afforded by the endorsement for the Additional Insured shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.

A duplicate or certificate of said insurance policy containing the above-stated required endorsements shall be delivered to the City Risk Manager after the issuance of said policy, with satisfactory evidence that the carrier is required to give the City of Lodi at least 30 days prior notice of the cancellation or reduction in coverage of the policy during the effective period of this Agreement. If there has been no such delivery within 48 hours prior to the expiration date of the policy, this Agreement shall be null and void.

- BOBS will not be charged for use of department sports facilities and equipment for regularly scheduled programs or activities with the exception of the Grape Bowl.
- Any facility requested outside the direct control of the Department (i.e.: Lodi Unified School District, State, and County facilities) may be requested through the Department but are not guaranteed for use at no cost to the BOBS.
- BOBS will be given office space within the Recreation Division in order to facilitate the provision of services to the mutual clientele of both the Department and BOBS. This will include a dedicated phone line, key/code access and use of meeting facilities to the extent it does not conflict with other department uses.
- A Department employee will be assigned as a Liaison to the BOBS. This position answers to the Department and functions only as a conduit for communication and cooperation between the Department and BOBS. The Liaison shall not perform tasks at the direction of BOBS or associated with development and delivery of BOBS programs.
- The Department will assess an administrative fee to all BOBS program registrations in order to compensate the Department for overhead costs (administrative time, marketing, registration of clients, etc.) related to BOBS programs. BOBS will receive registration proceeds minus the administrative fee. BOBS will account quarterly to the Parks and Recreation Commission regarding the income and expenses of its program revenues.
- When the BOBS host or co-host any major functions and/or special events on City Property (tournaments, dinners, etc.), the BOBS and the Department will meet prior to these events and determine if any fees and/or charges will be necessary to cover additional costs brought on by these events. Additional charges will be agreed upon prior to the scheduling of these events.

- Prior to the beginning of each fiscal year (July 1<sup>st</sup>), the BOBS and the Department will meet to discuss and determine any major capital outlay projects for the coming fiscal year. All projects will be supervised by the Parks Superintendent and the Parks Project Coordinator. The Project Coordinator will establish a project timeline and scope to which the project will strictly adhere.
- The BOBS will not perform any projects or maintenance to City real property or fixtures (excepting concession fixtures) without the written approval of the Director of Parks, Recreation and Cultural services and/or the Parks Superintendent.
- The BOBS will provide a representative member of the BOBS Executive Board to be present at all Parks and Recreation Commission meetings which generally occur the first Tuesday of every month.
- Any fee changes to programs from either the BOBS or the Department are to be discussed and agreed upon 60 days prior to the proposed implementation at which time there will be written notification of any changes.
- BOBS members must pass fingerprint clearance to have supervisory or disciplinary authority over minors.
- Either party can choose to terminate this agreement with 12 months notice.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first hereinabove written.

ATTEST:

CITY OF LODI

\_\_\_\_\_

City Clerk

By \_\_\_\_\_

Mayor

Approved as to Form

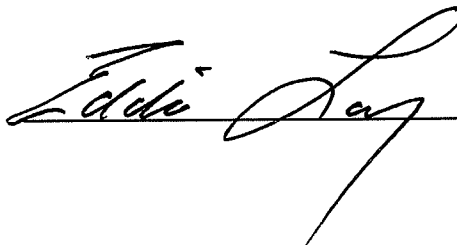
BOOSTERS OF BOYS AND

GIRLS SPORTS

\_\_\_\_\_

D. Stephen Schwabauer

City Attorney

  
\_\_\_\_\_

Pres.

Hereinabove called "BOBS"

RESOLUTION NO. 2012-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING THE MEMORANDUM OF  
UNDERSTANDING BETWEEN THE CITY OF LODI  
AND THE BOOSTERS OF BOYS AND GIRLS  
SPORTS (B.O.B.S)

=====

WHEREAS, the B.O.B.S. is a non-profit community sports organization that has assisted the City in providing services to Lodi's young athletes since 1960; and

WHEREAS, the services provided by the BOBS, and the roles and responsibilities of the BOBS and City, are outlined in a Memorandum of Understanding that took effect in 1987 and has been revised several times; and

WHEREAS, to better serve the BOBS and the Department, a single, up-to-date Memorandum of Understanding was developed through cordial discussions between Parks, Recreation and Cultural Services staff, the City Attorney and BOBS members; and

WHEREAS, the new agreement was approved by the B.O.B.S. Executive Board on May 9, 2012; and

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Memorandum of Understanding between the City of Lodi and the Boosters of Boys and Girls Sports (B.O.B.S.).

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2012-\_\_\_\_\_



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## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Agreement with California Emergency Management Agency Accepting the California Gang Reduction, Intervention and Prevention Program Grant (\$250,000) awarded to the City of Lodi beginning January 1, 2012, and ending December 31, 2013 and Appropriating \$10,000

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Chief of Police

---

**RECOMMENDED ACTION:** Adopt resolution authorizing City Manager to execute agreement with California Emergency Management Agency accepting the California Gang Reduction, Intervention and Prevention program grant (\$250,000) awarded to the City of Lodi beginning January 1, 2012, and ending December 31, 2013 and appropriating \$10,000.

**BACKGROUND INFORMATION:** The California Emergency Management Agency (Cal-EMA), in partnership with the Governor's Office of Gang and Youth Violence Policy has made \$8.2 million available to cities for gang prevention, intervention, re-entry, education, family and community services, and suppression activities. Cities can apply for up to \$250,000 in this competitive grant which requires a "dollar for dollar" match. Cities must match the amount awarded through local or federal funding in the form of cash or in-kind services.

The Lodi Police Department was successfully awarded \$250,000 for the California Gang Reduction, Intervention, and Prevention (CalGRIP) program to focus on reducing related violence and providing intervention for at-risk children ages 12 to 17. Per CalGRIP guidelines, an Advisory Council will be established to prioritize the use of awarded funds. The Advisory Council will be comprised of city officials; local law enforcement; local educational agencies and community based organizations. Twenty percent of grant funds must be provided to community based organizations that focus on youth outreach programs and education. This CalGRIP Grant will provide funds for the Lodi Boys and Girls Club Project Learn and Community Partnership for Families of San Joaquin County.

Program Award: CalGRIP awarded the City of Lodi \$250,000 over a two-year period. A majority, \$150,000 will be used for Police Department overtime related to special enforcement activities. A part-time Code Enforcement Officer will be hired at a cost of \$50,000. The remaining \$50,000 is allocated to Community Based Organizations to provide services such as after-school tutoring, mentoring and parenting assistance.

City Contribution: The City will provide \$85,000 in a cash match for two part-time Youth Outreach Workers to work with youth in gangs or at risk of joining a gang. Youth Outreach Workers will make appropriate referrals and provide resources for gang intervention. The City will provide in-kind service

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APPROVED: \_\_\_\_\_  
Konradt Bartlam, City Manager

match of \$165,000. This includes a Police Department Crime Analyst, City Manager's administrative oversight of the Youth Outreach Workers, Gang education presentations, continuing the Gang Resistance Education and Training (GREAT) programs for 6<sup>th</sup> graders, and providing program clerical support.

Program Implementation: The police department will increase Officer presence in target areas focusing on developing relationships within the community and identifying and preventing gang violence. Officers will make contact with gang members, conduct surveillance and participate in foot and bicycle patrols. Funding for the part-time code enforcement officer will enhance the ability to focus on properties associated with gang activity.

Youth Outreach Workers will identify at-risk youth, encourage participation in after-school tutoring programs, high-yield learning and leisure activities, and parent/adult involvement.

Coordinating and Advisory Council: The advisory council will identify crucial problems that must be addressed to effectively deal with Lodi's gang problem. The Coordinating and Advisory Council will meet regularly to review the status of the program and make recommendations to ensure ongoing program success.

Program Objective: Grant goals include reducing gang violence by 25 percent, removing 20 guns from the possession of gang members or violent offenders, and identifying and dismantling the leadership of at least one Norteno and one Sureno gang.

Appropriations of \$10,000 are requested in the current fiscal year to allow for immediate implementation of special enforcement activities.

**FISCAL IMPACT:** Funding and expenditures by fiscal year and funding source are noted below:

2011-12	Personnel Costs	Grant Funded	\$10,000	239001
2012-13	Personnel Costs	Grant Funded	\$180,000	239001
	City Administration	City in-kind match	\$18,000	340.456
	Police Administration	City in-kind match	\$90,000	101031
	Outreach Workers	General Fund Match	\$60,000	101033
2013-14	Personnel Costs	Grant Funded	\$60,000	239001
	City Administration	City in-kind match	\$12,000	340.456
	Police Administration	City in-kind match	\$45,000	101031
	Outreach Workers	General Funds Match	\$25,000	101033

**FUNDING AVAILABLE:** Appropriations for Fiscal Year 2012/13 have been included in the draft budget that will be before Council for adoption on June 6, 2012. Appropriations for Fiscal Year 2013/14 will be included in that budget as noted above.



Adopt a Resolution Authorizing City Manager to Execute Agreement with California Emergency Management Agency Accepting the California Gang Reduction, Intervention and Prevention Program Grant (\$250,000) awarded to the City of Lodi beginning January 1, 2012, and ending December 31, 2013  
May 16, 2012  
Page 2

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Jordan Ayers  
Deputy City Manager/Internal Services Director

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Mark Helms  
Chief of Police

MH/JB/pjt

Attachments



May 7, 2012

Chris Piombo, Lieutenant  
Lodi, City of  
215 West Elm Street  
Lodi, CA 95240

Subject: **NOTIFICATION OF APPLICATION APPROVAL**  
Gang Reduction, Intervention and Prevention Program  
Award #: GR11 01 7235, Cal EMA ID: 077-42202

Dear Lt. Piombo:

Congratulations! The California Emergency Management Agency (Cal EMA) has approved your application in the amount of \$250,000, subject to Budget approval. A copy of your approved subgrant is enclosed for your records.

Cal EMA will make every effort to process payment requests within 60 days of receipt.

This subgrant is subject to the Cal EMA Recipient Handbook. You are encouraged to read and familiarize yourself with the Cal EMA Recipient Handbook, which can be viewed on Cal EMA's website at [www.calema.ca.gov](http://www.calema.ca.gov).

Any funds received in excess of current needs, approved amounts, or those found owed as a result of a close-out or audit, must be refunded to the State within 30 days upon receipt of an invoice from Cal EMA.

Should you have questions on your subgrant, please contact your Program Specialist.

PSVS Grant Processing

Enclosure

c: Recipient's file

Cal EMA # 077420204FIPS# 077-4202

CFDA# \_\_\_\_\_

Grant # GR11017235

# **CALIFORNIA EMERGENCY MANAGEMENT AGENCY** **GRANT AWARD FACE SHEET (Cal EMA 2-101)**

The California Emergency Management Agency, hereafter designated Cal EMA, hereby makes a Grant Award of funds to the following:

1. Grant Recipient: City of Lodi

in the amount and for the purpose and duration set forth in this Grant Award.

2. Implementing Agency: Lodi Police Department

2a. Congressional District: 11

2b. State Senate District#: 14

2c. State Assembly District#: 10

2d. Location of Project: City of Lodi

2e. Congressional District(s): 11

3. Disaster/Program Title Gang Reduction, Intervention, Prevention

4. Performance Period 01/01/2012 to 12/31/2013

Grant Year	Fund Source	A. State	B. Federal	C. Total	D. Cash Match	E. In-Kind Match	F. Total Match	G. Total Project Cost
2012	5. GRIP	250,000	0	250,000	85,000	165,000	250,000	\$234,986
2013	6. GRIP	125,000	0	125,000	50,015	90,010	140,025	\$265,025
Select	7. Select						\$0	\$0
Select	8. Select						\$0	\$0
Select	9. Select						\$0	\$0
	10. TOTALS	\$250,000	\$0	\$250,000	\$85,000	\$165,000	\$250,000	\$500,011

11. This Grant Award consists of this title page, the application for the grant, which is attached and made a part hereof, and the Assurances/Certifications which are being submitted. I hereby certify I am vested with the authority to enter into this Grant Award Agreement, and have the approval of the City/County Financial Officer, City Manager, County Administrator, Governing Board Chair, or Approving Body. The Grant Recipient certifies that all funds received pursuant to this agreement will be spent exclusively on the purposes specified in the Grant Award. The Grant Recipient signifies acceptance of this Grant Award and agrees to administer the grant project in accordance with the Grant Award as well as all applicable state and federal laws, audit requirements, federal program guidelines, and Cal EMA policy and program guidance. The Grant Recipient further agrees that the allocation of funds may be contingent on the enactment of the State Budget.

12. Federal DUNS Number 020004552

13. Federal Employer ID Number 94-6000361

14. Official Authorized to Sign for Applicant/Grant Recipient:

Name: Konradt Bartlam

Title: City Manager, City of Lodi

Telephone: (209) 333-6700  
(area code)

FAX: (209) 333-6807  
(area code)

Email: rbartlam@lodi.gov

Payment Mailing Address: P.O. Box 3006

City: Lodi Zip + 4: 95241-1910

Signature [Signature]

Date: 1-12-12

[FOR Cal EMA USE ONLY]

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purposes of this expenditure stated above.

Cal EMA Fiscal Officer [Signature]

Date 5/3/12

Cal EMA Secretary (or designee) [Signature]

Date 5/3/12

Yr: 2011-12 / Chapter: 33 / PCA No: 14144

Item: 0690-102-0214

Fed Cat #: N/A

Component: 40.30.907

Program: Gang Reduction, Intervention and Prevention Program

Fund: Restitution

Match Req.: 100%, C/TK based on FA

Project No.: 11GRIP Amount: \$ 250,000

## SPECIAL CONDITION

Pursuant to the 2011 State Budget Realignment Act, and Senate Bill (SB) 92, administration and oversight responsibilities for the 2011 CalGRIP funds will be transferred to the Board of State and Community Corrections effective July 1, 2012.

Grant Award Agreement No. GR11017235 is hereby approved with the following conditions:

- The Cal EMA will reimburse a "payable" Report of Expenditures and Request for Funds (Cal EMA 2-201) for the 1<sup>st</sup> quarter expenditures incurred for the period January 1, 2012 through March 31, 2012, if received by Cal EMA no later than May 30, 2012.
- Any claims not received by Cal EMA by the May 30, 2012 deadline for the first quarter expenditures incurred January 1, 2012 through March 31, 2012 must be submitted to the Board of State and Community Corrections, 600 Bercut Drive, Sacramento, CA, 956811 for reimbursement.
- All future claims under this award will be reimbursed by the Board of State and Community Correction after July 1, 2012, under Item 5227-101-0214 of the Budget Bill (e.g., Senate Bill 957).

Failure to comply with these requirements may result in the withholding and disallowance of grant payments, the reduction or termination of the grant award and/or the denial of future grant funds.

**PROJECT CONTACT INFORMATION**

Recipient City of Lodi

Grant Number

GR11017235  
[FOR CALEMA USE ONLY]

Provide the name, title, address, telephone number, and e-mail address for the project contacts named below. NOTE: If you use a PO Box address, a street address is also required for package delivery and site visit purposes.

1. The **Project Director** for the project:

Name: Lt. Chris Piombo

Title: Support Services Division Supervisor

Telephone #: (209) 333-6723

Fax#: 209-339-0422

Email Address: cpiombo@pd.lodi.gov

Address/City/Zip: 215 W. Elm St., Lodi, CA 95240

2. The **Financial Officer** for the project:

Name: Jordan Ayers

Title: Deputy City Manager

Telephone #: (209) 333-6700

Fax#: 209-333-6807

Email Address: jayers@lodi.gov

Address/City/Zip: P.O. Box 3006, Lodi, CA 95241

3. The **person** having **Routine Programmatic** responsibility for the project:

Name: Lt. Chris Piombo

Title: Support Services Division Supervisor

Telephone #: 209-333-6723

Fax#: 209-339-0422

Email Address: cpiombo@pd.lodi.gov

Address/City/Zip: 215 W. Elm St., Lodi, CA 95240

4. The **person** having **Routine Fiscal Responsibility** for the project:

Name: Jeanie Biskup

Title: Management Analyst

Telephone #: 209-333-6800, ext.6722

Fax#: 209-339-0422

Email Address: jbiskup@pd.lodi.gov

Address/City/Zip: 215 W. Elm St., Lodi, CA 95240

5. The **Executive Director** of a nonprofit organization or the **Chief Executive Officer** (i.e., chief of police, superintendent of schools) of the implementing agency:

Name: Mark Helms

Title: Chief of Police

Telephone #: 209-333-6725

Fax#: 209-339-0422

Email Address: mhelms@pd.lodi.gov

Address/City/Zip: 215 W. Elm St., Lodi, CA 95240

6. The **Official Designated** by the Governing Board to enter into the Grant Award Agreement for the city/county or Community-Based Organization, as stated in Block 14 of the Grant Award Face Sheet:

Name: Konradt Bartlam

Title: City Manager

Telephone #: 209-333-6702

Fax#: 209-333-6807

Email Address: rbartlam@lodi.gov

Address/City/Zip: P.O. Box 3006, Lodi, CA 95241

7. The **chair** of the **Governing Body** of the recipient:

Name: JoAnne Mounce

Title: Mayor, City of Lodi

Telephone #: 209-333-6702

Fax#: 209-333-6807

Email Address: jmounce@lodi.gov

Address/City/Zip: P.O. Box 3006, Lodi, CA 95241

## SIGNATURE AUTHORIZATION

Grant Award #:

GR11 01 7235

Grant Recipient: City of Lodi

Implementing Agency: Lodi Police Department

**\*The Project Director and Financial Officer are *REQUIRED* to sign this form.**

**\*Project Director:** Chris Piombo

Signature: *C. V. Piombo*

Date: Jan. 12, 2012

**\*Financial Officer:** Jordan Ayers

Signature: *Jordan Ayers*

Date: Jan. 12, 2012

The following persons are authorized to sign for the  
**Project Director**

*Mark Helms*

Signature

Mark Helms

Name

*William Alexander*

Signature

William Alexander

Name

Signature

Name

Signature

Name

Signature

Name

The following persons are authorized to sign for the  
**Financial Officer**

*Jeanie Biskup*

Signature

Jeanie Biskup

Name

*Ruby R. Paiste*

Signature

Ruby Paiste

Name

Signature

Name

Signature

Name

Signature

Name

## CERTIFICATION OF ASSURANCE OF COMPLIANCE

I, Konradt Bartlam hereby certify that  
(official authorized to sign grant award; same person as Section 14 on Grant Award Face Sheet)

RECIPIENT: City of Lodi  
IMPLEMENTING AGENCY: Lodi Police Department  
PROJECT TITLE: Lodi GRIP

is responsible for reviewing the *Grant Recipient Handbook* and adhering to all of the Grant Award Agreement requirements (state and/or federal) as directed by Cal EMA including, but not limited to, the following areas:

### I. Federal Grant Funds

Recipients expending \$500,000 or more in federal grant funds annually are required to secure an audit pursuant to OMB Circular A-133 and are allowed to utilize federal grant funds to budget for the audit costs. See Section 8000 of the Recipient Handbook for more detail.

- ☒ The above named recipient receives \$500,000 or more in federal grant funds annually.  
☐ The above named recipient does not receive \$500,000 or more in federal grant funds annually.

### II. Equal Employment Opportunity – (*Recipient Handbook Section 2151*)

It is the public policy of the State of California to promote equal employment opportunity by prohibiting discrimination or harassment in employment because of race, religious creed, color, national origin, ancestry, disability (mental and physical) including HIV and AIDS, medical condition (cancer and genetic characteristics), marital status, sex, sexual orientation, denial of family medical care leave, denial of pregnancy disability leave, or age (over 40). **Cal EMA-funded projects certify that they will comply with all state and federal requirements regarding equal employment opportunity, nondiscrimination and civil rights.**

Please provide the following information:

Equal Employment Opportunity Officer: Dean Gualco  
Title: Human Resources Manager, City of Lodi  
Address: P.O. Box 3006, Lodi, CA 95241  
Phone: (209) 333-6704  
Email: dgualco@lodi.gov

**III. Drug-Free Workplace Act of 1990 – (Recipient Handbook, Section 2152)**

The State of California requires that every person or organization awarded a grant or contract shall certify it will provide a drug-free workplace.

**IV. California Environmental Quality Act (CEQA) – (Recipient Handbook, Section 2153)**

The California Environmental Quality Act (CEQA) (*Public Resources Code, Section 21000 et seq.*) requires all Cal EMA funded projects to certify compliance with CEQA. Projects receiving funding must coordinate with their city or county planning agency to ensure that the project is compliance with CEQA requirements.

**V. Lobbying – (Recipient Handbook Section 2154)**

Cal EMA grant funds, grant property, or grant funded positions shall not be used for any lobbying activities, including, but not limited to, being paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.

**VI. Debarment and Suspension – (Recipient Handbook Section 2155)**

*(This applies to federally funded grants only.)*

Cal EMA-funded projects must certify that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal department of agency.

**VII. Proof of Authority from City Council/Governing Board**

The above-named organization (applicant) accepts responsibility for and will comply with the requirement to obtain written authorization from the city council/governing board in support of this program. The applicant agrees to provide all matching funds required for said project (including any amendment thereof) under the Program and the funding terms and conditions of Cal EMA, and that any cash match will be appropriated as required. It is agreed that any liability arising out of the performance of this Grant Award Agreement, including civil court actions for damages, shall be the responsibility of the grant recipient and the authorizing agency. The State of California and Cal EMA disclaim responsibility of any such liability. Furthermore, it is also agreed that grant funds received from Cal EMA shall not be used to supplant expenditures controlled by the city council/governing board.

The applicant is required to obtain written authorization from the city council/governing board that the official executing this agreement is, in fact, authorized to do so. The applicant is also required to maintain said written authorization on file and readily available upon demand.



All appropriate documentation must be maintained on file by the project and available for Cal EMA or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both and the Recipient may be ineligible for award of any future grants if the Cal EMA determines that any of the following has occurred:

(1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

### CERTIFICATION

I, the official named below, am the same individual authorized to sign the Grant Award Agreement [Section 14 on Grant Award Face Sheet], and hereby swear that I am duly authorized legally to bind the contractor or grant recipient to the above described certification. I am fully aware that this certification, executed on the date and in the county below, is made under penalty of perjury under the laws of the State of California.

Authorized Official's Signature: \_\_\_\_\_

Authorized Official's Typed Name: Konradt Bartlam

Authorized Official's Title: City Manager

Date Executed: Jan. 11, 2012

Federal Employer ID #: 94-6000631 Federal DUNS # 020004552

Current Central Contractor Registration Expiration Date: 5/8/12 3/12/13 per CCR xel

Executed in the City/County of: Lodi, San Joaquin County.

### AUTHORIZED BY: (not applicable to State agencies)

- |   |   |
|---|---|
| <input type="checkbox"/> City Financial Officer           | <input type="checkbox"/> County Financial Officer |
| <input type="checkbox"/> City Manager                     | <input type="checkbox"/> County Manager           |
| <input checked="" type="checkbox"/> Governing Board Chair |   |

Signature: \_\_\_\_\_

Typed Name: JoAnne Mounce

Title: Mayor, City of Lodi

ATTEST

RANDI JOHL  
City Clerk

# BUDGET CATEGORY AND LINE ITEM DETAIL

Grant Recipient: City of Lodi		Grant Number: GR11 01 7235	
A. Personal Services – Salaries/Employee Benefits	GRIP 2011	100% MATCH	COST
<b>Youth Outreach Worker part-time (new City employees)</b> Salary \$21.50 hour X 1,603.5 hours Year 1 Medicare @ 1.45% Salary \$21.50 hour X 2,293 hours Year 2 Medicare @ 1.45%		\$34,475 \$500 \$49,300 \$715	\$34,475 \$500 \$49,300 \$715
<b>Code Enforcement Officer, part-time</b> Salary \$24/hour X 1,026 hours X 2 years Medicare @ 1.45%	49,248.00 1,428.00		\$49,248 \$1,428
<b>Police Officer overtime</b> Salary @ \$39.36 X 1.5OT = \$59.04/hour X 1,219 hours X 2 yrs	143,940.00		\$143,940
<b>School Resource Officers (Lodi PD, G.R.E.A.T. program)</b> Salary \$37.13 hour X 383 hrs/year X 2 years Medicare @ 1.45%		\$28,442 \$412	\$28,442 \$412
<b>Supervising Police Lieutenant</b> \$53.47 salary per hour X 368 hours/year X two years Medicare @ 1.45%		\$39,354 \$571	\$39,354 \$571
<b>Crime Analyst, Police Department part-time</b> \$30.55 hourly X 480 hours a year X 2 years Medicare @ 1.45%		\$29,328 \$425	\$29,328 \$425
<b>2 Management Analysts, Police Dept./City Manager's Office</b> \$33.49 per hour, 180 hours/year X 2 years Medicare @ 1.45%		\$12,056 \$175	\$12,056 \$175
<b>Sergeant, Special Investigations Unit Supervisor</b> \$44.56 salary per hour X 600 hours/year X two years Medicare @ 1.45%		\$53,472 \$775	\$53,472 \$775
<b>Personal Section Totals</b>	<b>\$194,616</b>	<b>\$250,000</b>	<b>\$444,616</b>
<b>PERSONAL SECTION TOTAL</b>			<b>\$444,616</b>

# BUDGET CATEGORY AND LINE ITEM DETAIL

Grant Recipient: City of Lodi		Grant Number: GR11 01 7235	
B. Operating Expenses	GRIP 2011	100% MATCH	COST
Project Learn after-school program provided by Lodi Boys & Girls Club, 25 participants for \$18,500 annually X 2 years	\$37,000		\$37,000
Fees for service referred through Community Partnership for Families of San Joaquin, \$6,500 annually X 2 years	\$13,000		\$13,000
Supplies, materials, phone expenses for Youth Outreach Workers \$1,692 X 2 years	\$3,384		\$3,384
Travel: Mileage reimbursement for Youth Outreach Workers visiting various Lodi homes, schools @ \$0.50/mile X 1,000 miles per year (\$1,000) X 2 years	\$2,000		\$2,000
Operating Section Totals	\$55,384	\$0	\$55,384
OPERATING SECTION TOTAL			\$55,384

## BUDGET CATEGORY AND LINE ITEM DETAIL

[illegible]

# LEVS Budget Summary Report

GR11 Gang Reduction, Intervention and Prevention Program

Award #: GR11 01 7235

Award Period: 01/01/12 - 12/31/13

Latest Request: , Not Final 201

## A. Personal Services - Salaries/Employee Benefits

F/S/L	Funding Source	Budget Amount	Paid/Expended	Balance	Pending	Pending Balance
L	11GRIP	250,000	0	250,000	0	250,000
S	11GRIP	194,616	0	194,616	0	194,616
<b>Total A. Personal Services - Salaries/Employee Benefits:</b>		<b>444,616</b>	<b>0</b>	<b>444,616</b>	<b>0</b>	<b>444,616</b>

## B. Operating Expenses

F/S/L	Funding Source	Budget Amount	Paid/Expended	Balance	Pending	Pending Balance
L	11GRIP	0	0	0	0	0
S	11GRIP	55,384	0	55,384	0	55,384
<b>Total B. Operating Expenses:</b>		<b>55,384</b>	<b>0</b>	<b>55,384</b>	<b>0</b>	<b>55,384</b>

## C. Equipment

F/S/L	Funding Source	Budget Amount	Paid/Expended	Balance	Pending	Pending Balance
L	11GRIP	0	0	0	0	0
S	11GRIP	0	0	0	0	0
<b>Total C. Equipment:</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

	Budget Amount	Paid/Expended	Balance	Pending	Pending Balance
<b>Total Local Match:</b>	<b>250,000</b>	<b>0</b>	<b>250,000</b>	<b>0</b>	<b>250,000</b>
<b>Total Funded:</b>	<b>250,000</b>	<b>0</b>	<b>250,000</b>	<b>0</b>	<b>250,000</b>
<b>Total Project Cost:</b>	<b>500,000</b>	<b>0</b>	<b>500,000</b>	<b>0</b>	<b>500,000</b>

F/S/L (Funding Types): F=Federal, S=State, L=Local Match

Paid/Expended=posted in ledger w/Claim Schedule. Pending=Processed but not yet in Claim Schedule

05/07/12

1. AA# \_\_\_\_\_  
2. JV# \_\_\_\_\_

CITY OF LODI APPROPRIATION ADJUSTMENT REQUEST			
TO:	Internal Services Dept. - Budget Division		
3. FROM:	Chief Mark Helms	5. DATE:	6/6/12
4. DEPARTMENT/DIVISION: Police			

6. REQUEST ADJUSTMENT OF APPROPRIATION AS LISTED BELOW					
	FUND #	BUS. UNIT #	ACCOUNT #	ACCOUNT TITLE	AMOUNT
A. SOURCE OF FINANCING	239		5607	CalGRIP	\$10,000
B. USE OF FINANCING	239	239001	7102	Overtime	\$ 10,000.00

7. REQUEST IS MADE TO FUND THE FOLLOWING PROJECT NOT INCLUDED IN THE CURRENT BUDGET
<p>Please provide a description of the project, the total cost of the project, as well as justification for the requested adjustment. If you need more space, use an additional sheet and attach to this form.</p> <p>The Police Department has been awarded \$250,000 in California Gang Resistance, Intervention and Prevention (CalGRIP) program funds. Funding is available in the current fiscal year from CalGRIP to fund police officer overtime to address ongoing gang related violence. It is requested that \$10,000 of the \$250,000 awarded be allocated for fiscal year 2011/12 for special enforcement to begin immediately.</p>
<p>If Council has authorized the appropriation adjustment, complete the following:</p> <p>Meeting Date: <u>6/6/12</u> Res No: _____ Attach copy of resolution to this form.</p> <p>Department Head Signature: <u>Mark Helms</u></p>

8. APPROVAL SIGNATURES	
Deputy City Manager/Internal Services Manager	Date

Submit completed form to the Budget Division with any required documentation.  
Final approval will be provided in electronic copy format.

RESOLUTION NO. 2012-\_\_\_\_\_

ADOPT RESOLUTION AUTHORIZING THE LODI POLICE DEPARTMENT TO  
PARTICIPATE IN THE CALIFORNIA GANG REDUCTION, INTERVENTION AND  
PREVENTION PROGRAM GRANT

=====

WHEREAS, the State of California Emergency Management Agency, in partnership with the Governor's Office of Gang and Youth Violence, has made funds available January 2, 2012 and ending December 31, 2013 under the California Gang Reduction, Intervention, and Prevention (CalGRIP) program.

WHEREAS the Lodi Police Department is eligible to receive \$250,000 to develop and implement a comprehensive program to reduce incidents of gang violence and focus on gang intervention and prevention; and

WHEREAS, appropriations totaling \$250,000 will be included in the appropriate budgets for fiscal years 2011-12, 2012-13 and 2013-14; and

WHEREAS, CalGRIP requires matching funds by the City of Lodi totaling \$250,000 with in-kind services of \$165,000 and \$85,000 in general funds to staff the part time Youth Outreach Workers; and

WHEREAS, the Lodi Police Department will expend \$150,000 for Officers on special enforcement, \$50,000 for a part time Code Enforcement Officer, and provide \$50,000 of program funds to community based organizations that focus on youth outreach programs and education and;

WHEREAS, an appropriations request is being made to expend \$10,000 in Fiscal year 2011-12 to immediately begin special enforcement deploying police officers to address gang related violence and crimes and;

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize City of Lodi participation in an agreement between the State of California Office Emergency Management Agency and the Lodi Police Department, thereby accepting and appropriating CalGRIP funding in the amount of \$250,000,000 to reduce gang violence, and provide intervention for at risk youth in Lodi.

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDY JOHL  
City Clerk

2012-\_\_\_\_\_



TM

## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Agreement with County of San Joaquin for Automated Message Switching System and Criminal Justice Information System Access (\$21,420)

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Chief of Police

---

**RECOMMENDED ACTION:** Adopt resolution authorizing City Manager to execute agreement with County of San Joaquin for Automated Message Switching System and Criminal Justice Information System access, in the amount of \$21,420.

**BACKGROUND INFORMATION:** This is a renewal of the yearly contractual agreement between the City of Lodi Police Department and the County of San Joaquin through its Information Systems Division to provide services which include, but are not limited to, Automated Message Switching System access and Criminal Justice Information System (CJIS) access for Fiscal Year 2012/2013.

The data processing service allows the Police Department to access County warrant information and other criminal justice information housed in the County of San Joaquin database. This information is critical to local law enforcement. Without access to the Automated Message Switching/CJIS Systems, the Police Department will not be able to conduct checks on individuals with local warrants, probations status on offenders and inmate records such as custody status, trial status, adjudications and sentencing.

**FISCAL IMPACT:** Estimated cost is \$21,420.

**FUNDING AVAILABLE:** Fiscal Year 2012/2013 Budget (101031)

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Jordan Ayers  
Deputy City Manager

---

Mark Helms  
Chief of Police

MH/JB/pjt

---

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager



## **AGREEMENT**

**THIS AGREEMENT**, made and entered into this 1st day of July, 2012, by and between the **COUNTY OF SAN JOAQUIN**, through its Information Systems Division, hereinafter referred to as "**COUNTY**" and **CITY OF LODI**, hereinafter referred to as "**AGENCY**";

### **WITNESSETH:**

**WHEREAS**, **COUNTY** provides services and/or equipment listed in Attachment "A" hereinafter referred to as "**COMPUTER SERVICES**" to **AGENCY**; and

**WHEREAS**, **COUNTY** has certain computer equipment and is able to provide information services which **AGENCY** desires to use in its operations;

**WHEREAS**, **COUNTY'S** Information Systems Division services offered to **AGENCY** under this Agreement differs from that provided in previous years and it is necessary to set out the understanding of the parties as to the extent of services and liability for provision of access to the **COMPUTER SERVICES** for information.

**IT IS HEREBY AGREED** between the parties as follows:

1. **COMPUTER SERVICES FOR ACCESS TO NON-REDUNDANT, NON-FAULT TOLERANT COMPUTER SYSTEMS**

The COUNTY shall provide to AGENCY the COMPUTER SERVICES of COUNTY'S Information Systems Division. The parties expressly acknowledge that the Information Systems Division computer systems are non-fault tolerant, non-redundant systems which do not provide continuous access seven (7) days a week and twenty-four (24) hours a day. The computer systems may go down and be unable to provide COMPUTER SERVICES at any time of day or night for undeterminable periods of time and also must be scheduled to be taken down for maintenance and repairs from time to time. Therefore, COUNTY does not represent that the COMPUTER SERVICES provided under this Agreement will enable AGENCY to receive information from the computer systems within any specific time period. AGENCY has considered the express limitations set forth in this Agreement of the COMPUTER SERVICES, together with the needs of AGENCY, and has determined that AGENCY'S business operations require the use of the services set out in this Agreement.

2. **COMPENSATION**

- a. COUNTY will provide the COMPUTER SERVICES for the estimated annual amount of compensation as shown in Attachment "A". COUNTY shall bill AGENCY only for actual COMPUTER SERVICES provided, one month after COMPUTER SERVICES are provided. AGENCY shall provide full payment to COUNTY of the billed amount by the fifteenth day of the date of billing. In the event payment is not made in accordance with this provision COUNTY may, at its option, terminate the agreement in accordance with the provisions of Paragraph 5.
- b. In the event that the AGENCY's estimated quantities, as indicated in Attachment "A", are exceeded for any reason, County may evaluate and, if necessary, increase the quantities indicated in Attachment "A", which may also result in the estimated annual amount of compensation provided herein to be increased. County will notify AGENCY, in writing, no less

than thirty (30) calendar days in advance of any intended increase of estimated annual amount of compensation. AGENCY shall be allowed the option to terminate this agreement in accordance with the provisions of Paragraph 5 in the event of an increase in the estimated annual amount of compensation.

- c. In the event that County's cost of Computer Services are increased due to any reason, County may increase the rate of compensation, as indicated in Attachment "A", which may also result in the estimated annual amount of compensation provided herein to be increased. County will notify AGENCY, in writing, no less than thirty (30) calendar days in advance of any intended increase of estimated annual amount of compensation. AGENCY shall be allowed the option to terminate this agreement in accordance with the provisions of Paragraph 5 in the event of an increase in the estimated annual amount of compensation.

### 3. OPTIONAL SERVICE AND EQUIPMENT

COMPUTER SERVICES under this agreement are limited solely to the ongoing services, systems, and equipment listed in Attachment "A" which are in operation on the effective date of this agreement. Services and/or equipment not covered in this agreement may be provided to AGENCY at COUNTY'S option subject to the following conditions:

- a. AGENCY must submit a written request for the additional services and/or equipment which has been signed by the appropriate agency official, and
- b. Additional services, and/or equipment shall be provided at the current rates of compensation and shall be billed as additional items over and beyond the total estimated annual amount compensation designated in this agreement.

Maintenance in connection with the equipment provided under this agreement is included in the rate of compensation for equipment and will not be billed as an additional charge to AGENCY.

### 4. TERM

The term of this contract shall be one year beginning July 1, 2012, and ending June 30, 2013.

### 5. TERMINATION

- a. This contract may be terminated by either party upon thirty (30) calendar days advance written notice to the other party. Notwithstanding such termination, AGENCY shall compensate COUNTY for the actual COMPUTER SERVICES provided through the date the termination of the contract is effective. If AGENCY fails to timely compensate COUNTY as provided in this contract, AGENCY shall be held liable for the reasonable cost of collecting such compensation including attorneys fees and court costs incurred by COUNTY. In no event shall COUNTY be liable for reimbursing AGENCY for the costs to procure alternative services to those services provided under this Agreement regardless of whether AGENCY or COUNTY initiates termination of the Agreement.
- b. All rental equipment in the possession of AGENCY shall be returned to COUNTY in the same condition as it was delivered to AGENCY, less normal wear and tear. COUNTY shall be compensated by contractor for all loss or damage to said equipment which is not the result of a willful or negligent act by COUNTY and which does not constitute normal wear and tear.

### 6. INDEMNIFICATION AND HOLD HARMLESS

The AGENCY agrees that it shall indemnify, defend and hold harmless the COUNTY, the members

of its Board of Supervisors, its officers, agents, and employees, from and against all demands, claims, damages, losses, expenses, and costs including attorneys' fees and court costs arising out of and/or resulting from the performance of the activities and services contemplated by this agreement, except for demands, claims, damages, losses, expenses, and costs resulting from the sole and exclusive negligence of the COUNTY, or its agents, or those brought by employees or agents of COUNTY concerning their employment or agency relationship.

7. LIMITATIONS OF LIABILITY

In no event shall COUNTY be responsible for any damage, compensatory, consequential, punitive, or special in the event that the AGENCY is unable to access and/or obtain information from COMPUTER SERVICES of COUNTY. This Agreement shall not be construed to be either a representation or a warranty to AGENCY that it will be able to access and obtain information from the COMPUTER SERVICES at any particular time or within any particular response time. COUNTY does not grant any warranty as to the validity, completeness or usefulness of any information received by AGENCY from the COMPUTER SERVICES. COUNTY shall not be responsible nor liable for the costs to AGENCY to procure alternative services to the services provided for under this Agreement or upon termination of this Agreement by either party.

In the event of errors in COMPUTER SERVICES due to the failure of COUNTY'S equipment, software, circumstances beyond the control of COUNTY, or the failure of COUNTY'S employee(s) to operate the equipment in accordance with COUNTY'S standard operating procedures, or COUNTY'S inability to provide COMPUTER SERVICES due to circumstances beyond its control, COUNTY'S liability shall be limited to either subparagraph (a) or (b) below, either of which will be considered to be AGENCY exclusive remedy:

- a. The correction of errors of which COUNTY has received written notice and proof or the performance of the service, whichever is the situation; or
- b. Where such correction or performance of service is not practicable, AGENCY shall be entitled to an equitable credit not to exceed the charges invoiced to AGENCY for that portion of the service which produced the erroneous result or for that portion of the service which could not be performed, whichever is the situation.

COUNTY shall be liable for the loss, destruction or damage to AGENCY supplied materials only if such loss, destruction, or damages was due to the negligence of COUNTY and AGENCY sole remedy shall be COUNTY restoring the same, provided such restoration can be reasonably performed by COUNTY and provided that AGENCY provides COUNTY with all source data necessary for such restoration in similar form to that normally presented to COUNTY under this Agreement.

8. INDEPENDENT CONTRACTOR

The AGENCY, and the agents and employees of AGENCY, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of COUNTY.

9. ASSIGNMENT

Without the written consent of COUNTY, this agreement is not assignable by AGENCY either in whole or in part.

10. TIME OF THE ESSENCE

Time is the essence of this agreement.

11. MODIFICATIONS

No alteration, variation, or modification of the terms of this contract shall be valid unless made in writing prior to the effective date and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

12. COMPLIANCE WITH LAWS

AGENCY shall comply with the California Fair Employment Practices Act (Labor Code Section 1410, et seq.) and any amendments thereto.

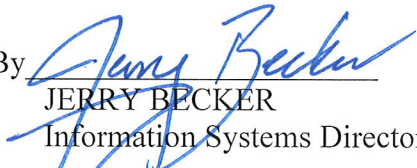
This contract may, at the option of COUNTY, be terminated or suspended in whole or in part in the event AGENCY fails to comply with the nondiscrimination clause of the contract. In the event of termination under this paragraph, COUNTY shall be compensated for goods and services provided to the date of termination. Termination or suspension shall be effective upon receipt of written notice thereof.

13. CONFIDENTIALITY

AGENCY, its employees, officers, and agents shall protect and keep all information and materials obtained through the services of this agreement confidential and from unauthorized use and disclosure. This clause shall not apply to that information which is or becomes a public record subject to the disclosure requirements of the Public Records Act.

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first written above.

COUNTY OF SAN JOAQUIN, a  
political subdivision of the State of  
California

By   
JERRY BECKER  
Information Systems Director  
"COUNTY"

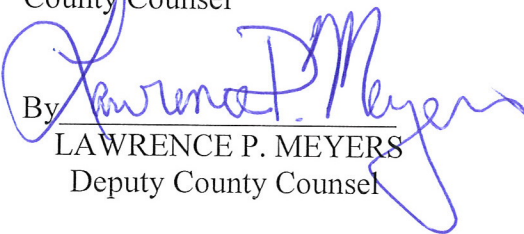
CITY OF LODI

By \_\_\_\_\_

Title \_\_\_\_\_

"AGENCY"

APPROVED AS TO FORM:  
DAVID WOOTEN  
County Counsel

By   
LAWRENCE P. MEYERS  
Deputy County Counsel

Approved as to form   
City Attorney

**Rate Schedule  
Fiscal Year 2012-2013**

**Computer Services**

Automated Message Switching System Access  
CJIS System Access

<b>Service</b>	<b>Estimated Quantity</b>	<b>Type</b>	<b>Estimated Rate</b>	<b>Estimated Annual Cost</b>	<b>Estimated Total</b>
* Special Processing Request	8	Hours	\$ 127.50	\$ 1,020.00	
Transactions	255,000	Each	\$ 0.08	\$ 20,400.00	
<b>Total Estimated Annual Cost</b>					<b>\$ 21,420.00</b>

\* Special Processing Requests require written authorization specifying work to be performed.

RESOLUTION NO. 2012-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
AUTHORIZING THE CITY MANAGER TO EXECUTE AN  
AGREEMENT FOR AUTOMATED MESSAGE  
SWITCHING AND CRIMINAL JUSTICE INFORMATION  
SYSTEMS ACCESS FOR FISCAL YEAR 2012-13

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WHEREAS, San Joaquin County provides to the City of Lodi access to Automated Message Switching and Criminal Justice Information Systems (CJIS); and

WHEREAS, San Joaquin County has certain data processing equipment and is able to provide data processing services, which the City of Lodi desires to use in its operations.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute an agreement for Automated Message Switching and Criminal Justice Information Systems Access with the County of San Joaquin Information System Division, of Stockton, California, in an amount not to exceed \$21,420.

Dated: June 6, 2012

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I hereby certify that Resolution No. 2012-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2012-\_\_\_\_\_



## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt Resolution Authorizing the City Manager to Engage the Professional Services of Lamont Financial Services, Jones-Hall, Stone and Youngberg, LLC and JP Morgan Related to Refinancing the 2002 General Fund Certificates of Participation (COPS), the 2003B CSCDA Wastewater COPS and the 2004 Wastewater COPS

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Deputy City Manager

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**RECOMMENDED ACTION:** Adopt Resolution authorizing the City Manager to engage the professional services of Lamont Financial Services, Jones-Hall, Stone and Youngberg, LLC and JP Morgan related to refinancing the 2002 General Fund Certificates of Participation (COPS), the 2003B CSCDA Wastewater COPS and the 2004 Wastewater COPS.

**BACKGROUND INFORMATION:** The City has been presented with an opportunity to refinance a number of its outstanding bond issues at attractive interest rates and savings. In the current bond market, the existing 2002 General Fund COPS, 2003B CSCDA Wastewater COPS and the 2004 Wastewater COPS appear to be economically viable refinancings. Due to the different natures of the underlying credits associated with these existing debt issues (General Fund vs. Wastewater Fund), the City will structure the refinancings in such a manner to maximize the potential savings. As such, the refinancings will be handled as two separate transactions, running on parallel timelines. Preliminary indications show that the City can harvest net present value savings of approximately \$2.6 million on the General Fund refinancing and approximately \$1.3 million on the Wastewater refinancing.

In order to complete these refinancings, the City must assemble a financial team to handle various parts of these transactions.

Lamont Financial Services has worked as a financial advisor for the City on a number of debt issuances over the years. Staff has been pleased with the expertise and services provided by Lamont and recommends that Council approve a contract for services related to the subject refinancings. Lamont has proposed a not-to-exceed fee of \$100,000 for the combined refinancings. Typically, financial advisor fees are paid with the proceeds from bond issues, resulting in no out-of-pocket costs to the City.

Jones-Hall served as bond counsel for the City on its last debt issuance, the Water Treatment Plant. Jones-Hall proved to be a very responsive, responsible firm and provided services at a cost much lower than competing firms. Staff recommends that Jones-Hall be awarded a contract to act as bond counsel for these re-financing transactions. Jones-Hall has proposed a fee of \$95,000 for the work associated with both refundings and will be paid from bond proceeds at closing, resulting in no out-of-pocket costs for the City.

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager



Lamont has received proposals for underwriting services from Stone and Youngberg, LLC and from JP Morgan. After evaluating the proposals, Lamont and staff are recommending that we engage Stone and Youngberg, LLC as the senior underwriter for the Wastewater refinancing and as the co-underwriter for the General Fund refinancing. Lamont and staff are recommending that JP Morgan be engaged as the senior underwriter for the General Fund refinancing and also act as the co-underwriter for the Wastewater refinancing. Total underwriter costs, which will be negotiated close to the closing date of the issues, are estimated to be approximately \$200,000 and will be paid from bond proceeds.

**FISCAL IMPACT:** Preliminary estimates of net present value savings of approximately \$2.6 million on the General Fund refinancing and \$1.3 million on the Wastewater refinancing.

**FUNDING AVAILABLE:** Refinancing bond proceeds.

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Jordan Ayers  
Deputy City Manager

JA/ja

Attachments

RESOLUTION NO. 2012-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENGAGE THE PROFESSIONAL SERVICES OF LAMONT FINANCIAL SERVICES, JONES-HALL, STONE AND YOUNGBERG, LLC AND JP MORGAN RELATED TO REFINANCING THE 2002 GENERAL FUND CERTIFICATES OF PARTICIPATION (COPS), THE 2003B CSCDA WASTEWATER COPS AND THE 2004 WASTEWATER COPS

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WHEREAS, the City has an opportunity to refinance three existing debt issues at attractive interest rates resulting in savings to the City and its ratepayers; and

WHEREAS, the City must assemble a financial team to handle various parts of the refinancing transactions; and

WHEREAS, Lamont Financial Services is recommended for selection as the Financial Advisor for this transaction; and

WHEREAS, Jones-Hall is recommended for selection as Bond Counsel for this transaction; and

WHEREAS, Stone and Youngberg, LLC is recommended for selection as the Senior Underwriter for the refinancing of the two Wastewater issues and as co-underwriter for the General Fund refinancing issue; and

WHEREAS, JP Morgan is recommended for selection as the Senior Underwriter for the refinancing of the General Fund refinancing issue and as co-underwriter for the two Wastewater issues.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi does hereby authorize the City Manager to engage the professional services of Lamont Financial Services, Jones-Hall, Stone and Youngberg, LLC and JP Morgan related to refinancing the 2002 General Fund COPS, the 2003B CSCDA Wastewater COPS and the 2004 Wastewater COPS.

Dated: June 6, 2012

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I hereby certify that Resolution No. 2012-\_\_\_\_\_ as passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following votes:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2012-\_\_\_\_\_



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## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Approving the Single Member Services Agreement by and between the City of Lodi and the Northern California Power Agency and Authorizing the City Manager to Execute Said Agreement (\$30,400)

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Electric Utility Director

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**RECOMMENDED ACTION:** Adopt a resolution approving the Single Member Services Agreement by and between the City of Lodi and the Northern California Power Agency and authorizing the City Manager to execute said agreement, in the amount of \$30,400.

**BACKGROUND INFORMATION:** The California Renewable Energy Resources Act, which became effective on December 10, 2011, requires that the amount of electricity generated from eligible renewable energy resources be increased to at least 20 percent of the total electricity sold to retail customers in California by December 31, 2013, 25 percent by December 31, 2016 and 33 percent by December 31, 2020.

While Lodi will need to adopt a Renewable Energy Resources Procurement Plan (RPS Procurement Plan) to meet the requirements, the California State Energy Commission (CEC) still has not published the details of the requirements for such RPS Procurement Plans, though they were required to do so no later than December 31, 2011. Staff anticipates bringing a RPS Procurement Plan to Council for approval in the first quarter of fiscal year 2012/13. We do know that different amounts of varying types of renewable resources in various years will be required. These different types are called Portfolio Content Categories (PCC), see Attachment A.

In anticipation of the RPS Procurement Plan, staff has completed a preliminary analysis. Based on this analysis it is expected that no net purchases will be required to meet renewable resource requirements through calendar year 2013. Analysis has also shown that Lodi has a surplus of the more valuable PCC 1 which includes renewable resource products that are scheduled from an eligible renewable energy resource directly into a California balancing authority. Lodi's surplus comes mostly from our entitlements to Northern California Power Agency (NCPA) geothermal plants.

This excess PCC 1 may be sold and replaced with a much less expensive PCC 3 resource. PCC 3 includes unbundled renewable energy credits that do not qualify under the criteria for other Content Categories. This exchange of PCC types may result in savings to Lodi of as much as \$2 million this fiscal year.

NCPA is currently working to modify the Market Power Purchase Agreement (MPP) to enable NCPA to make these types of transactions for the MPP Participants, which includes Lodi. Unfortunately it is unlikely that the MPP can be modified in time to make the transactions that need to be completed this

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APPROVED: \_\_\_\_\_  
Konradt Bartlam, City Manager

year. Lodi itself has neither the time nor experience to complete these transactions on our own, in the available time frame.

NCPA has developed the Single Member Services Agreement (SMSA) and the attached scope of work (Advisory Services) to facilitate such independent transactions, by assisting their members in carrying out economic and timely transactions. The SMSA will allow additional scopes of to be attached to it in the future, as needed from time to time. Any additional scopes of work will require separate approvals by both NCPA and Lodi. The City of Alameda has recently approved its SMSA scope of work for the same services as those to be provided to Lodi.

Potential transactions that come out of this process will still need to be approved in accordance with Lodi's existing approval process.

**FISCAL IMPACT:** An amount not to exceed \$30,400.

**FUNDING AVAILABLE:** Included in FY2012/13 EUD Budget Account Number 160603.

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Jordan Ayers  
Deputy City Manager/Internal Services Director

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Elizabeth A. Kirkley  
Electric Utility Director

PREPARED BY: Matt Foskett, Rates and Resources Manager

EAK/MF/lst

**SINGLE MEMBER SERVICES AGREEMENT  
FOR  
SPECIAL TRANSACTIONS  
BY AND BETWEEN THE  
CITY OF LODI  
AND THE  
NORTHERN CALIFORNIA POWER AGENCY**

This Single Member Services Agreement for Special Transactions (the “Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2012 (“Effective Date”), by and between the Northern California Power Agency (“NCPA”), a California joint powers and public entity having its central office at 651 Commerce Drive, Roseville, California and the City of Lodi (“Member”), a municipal corporation and member of NCPA, having its central office at 221 W. Pine Street, Lodi, California. NCPA and the Member are occasionally herein referred to individually as a “Party” or collectively as the “Parties”. This Agreement is premised on the following.

**RECITALS:**

WHEREAS, NCPA provides, among other services to its membership: electric generation facility development and power resource pooling services to the majority of its member public entities and an associate nonprofit member,

and technical, operational, and maintenance services on behalf of the majority of member and associate member entities, for the operation and maintenance of NCPA electric generating projects in which they are invested, as well as dispatch, scheduling coordination, trading and risk management services, so that the members of NCPA on the whole, exercising their common powers pursuant to the Joint Exercise of Powers Act, may supply electrical power and energy for their residential, commercial, and industrial customers or own use on a reliable, cost-effective, and environmentally sensitive basis, with the advantages of the economy of scale, which may, under some circumstances, benefit all of NCPA's members; and

WHEREAS, the Member, as a member of NCPA, while it looks to NCPA in part for the services described above, it nevertheless wishes to request that NCPA provide special services, in the nature of an advisor or agent, by which the Member may receive an advantage by avoiding the cost of the embedded expertise that it would have to employ in the absence of NCPA, and the risks associated therewith, so that the Member may, at its sole risk, and without hazard to NCPA and its other members, receive benefits, when other NCPA members may not share interests in this Member's particular effort; and

WHEREAS, this Agreement has been drawn to first protect NCPA and its members from any exposure to liability of any kind that might result from any

act or omission in the performance of this Agreement, to the fullest extent permitted by law, due to the fact that NCPA will be acting for the Member and not for any other member in its performance of this Agreement and due to the further fact that the benefit of this Agreement to the other members is limited to the extent to which the challenges of this Agreement develop in NCPA further skill and expertise, but not to any economic or financial benefit for which those members should be liable; and

WHEREAS, the Member desires to utilize the benefits of the investment in, and expertise available through the auspices of NCPA, and NCPA having weighed the consideration herein, and the protection the Member intends to provide NCPA and its other members in this Agreement, wishes to assist the Member;

Now, Therefore, in consideration of the premises and the mutual covenants and conditions set forth herein, the Parties have entered into this Agreement.

### **Article 1 – SCOPE OF SERVICES**

Upon mutual agreement, and subject to the General Conditions described below, NCPA will provide to the Member Advisory Services, Agency Services, Pooled Subscription Services, and Power Procurement Services (Services), for

Power Transactions, Gas Transactions, and Financial Transactions (collectively Transactions), as defined and described in this Agreement.

**1.1 General Conditions.** NCPA shall not be obligated under this Agreement to provide any Services to, or undertake any Transactions for, the Member, notwithstanding that fact that the Member may have completely and faithfully complied with each and every term, condition, and covenant of this Agreement. NCPA may decline to furnish any Service or Transaction requested by the Member in the sole and absolute discretion of NCPA, acting by and through its Commission without the vote of the Member, and such discretion of the Commission shall not be subject to review or to the dispute resolution provisions of this Agreement or of other agreements between the Member and NCPA; provided, however, that, notwithstanding the foregoing, should NCPA have agreed in a written Confirmation, as provided for in Attachment B hereto, to provide any Service to or undertake any Transaction for the Member; provided that the Member is then at the time of the Confirmation not in default of, and has completely and faithfully complied with each and every term, condition, and covenant of this Agreement, then NCPA shall provide such Service or undertake such Transaction.

**1.2 Power Transactions.** Power Transactions mean Transactions for electrical power, and electrical capacity, energy, exchange, and ancillary services,



or high voltage electric transmission transactions, with parties that are not members of NCPA for the purpose of serving the Member which would benefit and affect the Member, not be of interest to other NCPA members or practicably capable of execution through the NCPA Pooling Agreement or the NCPA Facilities Agreement, and are not subject to a right of refusal.

**1.3 Gas Transactions.** Gas Transactions mean natural gas supply, storage, transportation, and delivery transactions, with parties that are not members of NCPA, for the purpose of serving the Member which would benefit and affect the Member, and not be of interest to other NCPA members or practicably capable of execution through the NCPA Pooling Agreement and the NCPA Facilities Agreement, or the Third Phase Agreements for other natural gas-fueled NCPA projects, and are not subject to a right of refusal.

**1.4 Financial Transactions.** Financial Transactions mean natural gas and electric power national exchange-based transactions, or such financial transactions with parties that are not members of NCPA, for the purpose of hedging or protecting the Member's exposure to the market risks of volatility in the natural gas and electric power markets which would benefit and affect the Member, and not be of interest to other NCPA members, or practicably capable of execution through the NCPA Pooling Agreement or the Third Phase Agreements for other NCPA projects, and not subject to a right of refusal.

**1.5 Advisory Services.** Advisory Services mean technical, economic, financial, legal, risk and credit analysis, and other advice of a professional nature, related to the potential or ongoing Services that NCPA may provide the Member under this Agreement, on a flat monthly retainer basis, for the costs directly associated with this Agreement, shown initially on Attachment A to this Agreement. Advisory Services also include such services provided by NCPA on an hourly fee basis for potential and ongoing Transactions and Agency Services, that will recover for NCPA all of its costs to protect the other NCPA members. NCPA may adjust the monthly retainer and hourly fees as it determines may be required, in its sole discretion, during the preparation and adoption of the NCPA Annual Budget.

**1.6 Agency Services.** Agency Services mean services that NCPA may provide in the capacity of the exclusive agent of the Member, as principal, subject to the General Conditions of this Agreement, to execute and perform Transactions, on an hourly fee basis, that will recover for NCPA all of its costs to protect the other NCPA members.

**1.7 Pooled Subscription Services.** Pooled Subscription Services mean services that NCPA may provide the Member and other members of NCPA as an Advisory Service and an Agency Service, where the Member and at least another member of NCPA (Cooperating Member) has executed a Single Member Services

Agreement for Special Transactions substantially in the form of this Agreement. Pooled Subscription Services include Power Transactions, Gas Transactions, or Financial Transactions that would benefit and affect the Member and the Cooperating Member or Members, and not be of interest to other NCPA members, or practicably capable of execution through the NCPA Pooling Agreement or the Third Phase Agreements for other NCPA projects, and that are not subject to a right of refusal.

**1.8 Power Procurement Services.** Power Procurement Services mean execution of Power Transactions by NCPA in its own name on behalf of the Member where the Member is constrained from the ability to directly contract with the counter party for such Power Transaction.

## **Article 2 – REQUEST FOR SERVICES**

**2.1 Member Request.** After the Effective Date, NCPA shall provide the Member with Advisory Services in consideration of the payment of the monthly retainer. Upon receipt of a written request for Advisory Services with respect to potential Transactions and Agency Services, NCPA will respond to the Member, subject to the General Conditions, with a proposal for fee-based Advisory Services related to the requested potential Transactions or Agency Services, including the number and identity of NCPA personnel, by job

classifications, the hourly estimates, all special programs and services, such as national price reporting services, all materials and equipment, all other pertinent information, such as required outside support, a schedule and an estimate of costs, that would be components of the fee for the fee-based Advisory Services.

**2.2 NCPA Costs of Response.** Before responding, NCPA shall estimate, and provide to the Member the estimate, NCPA's expected costs for responding to the Member Request. The Member shall advance such estimated costs before NCPA provides its response, subject to the General Conditions. NCPA will not respond if it does not receive the advance within twenty days of the date of NCPA's estimate. NCPA will not be liable to the Member if NCPA, after expending all or a part of the advance of estimated costs, declines to respond to, or suggests alternatives to the Member Request, in NCPA's discretion, exercised under the General Conditions.

Notwithstanding the foregoing, if services are ultimately not provided by NCPA, the Member may submit a written request for refund of all unexpended advanced funding of estimated costs related to a specific Member Request. After receipt of the written request for unexpended funds, NCPA will refund unexpended advanced funding to the Member less any outstanding costs, invoices, and other liabilities for which NCPA may be liable as a result of any

services provided or the cost of providing the estimate, as determined in its sole discretion.

**2.3 Mutual Agreement on Scope of Services.** If, after the payment or tender of payment for all of the actual costs to NCPA of responding to the Member Request, or after agreement on the allocation of budget costs, the Member and NCPA agree to the Services that NCPA should provide, NCPA and the Member shall execute and deliver a Confirmation of the Transactions and Services, including any Advisory and Agency Services, that NCPA will provide, if and as requested by the Member.

**2.4 Authentication of Delegation.** Before responding to any Member Request, and again prior to confirming any Services or Transactions, NCPA is entitled to require an authentication of the delegation of any authority of the governing body of the Member to a manager of the Member, by a formal resolution and legal opinion, to confirm that the delegation is appropriate in all respects given the then current documents and the proposed Transactions and Services to be effected thereon. In addition, NCPA may require, as part of the General Conditions, that the Member or its authorized manager delegate authority to NCPA before it undertakes to perform any Services or execute any Transaction on behalf of the Member, in form and substance acceptable to NCPA, in its sole discretion, as provided in the General Conditions. Any delegation of

authority to Member's manager shall require a resolution of the governing body of the Member affirmatively delegating to the manager of the Member the authority required for Transactions or Services under this Agreement.

**2.5 Confirmations.** No obligation as might be imposed by law on NCPA or its other members shall arise unless a written Confirmation accepting that obligation in respect to a Transaction or Service, described in detail in the Confirmation, shall have been accepted by the Member without qualification, and approved by the NCPA Commission. A failure of a Disclosure Statement to describe a risk or effect of a Transaction or Service shall not excuse the Member from its liability therefore, given that the Member shall in all situations be wholly responsible for the Disclosure Statement.

### **Article 3 – DUE DILIGENCE**

**3.1 Creditworthiness of Member.** At the time of making a request for a Transaction, the Member shall advance to NCPA, if required by NCPA, the estimated fee expense for obtaining the unqualified opinion of a nationally ranked certified public accounting firm stating that the Member will have the financial capacity to timely pay and retire all of the costs and liabilities that may be associated with the requested Transaction. Notwithstanding the delivery of an unqualified opinion, pursuant to the General Conditions NCPA may request

the Member to include in a Confirmation covenants to maintain certain financial ratios, to maintain special and reserve funds, to provide security to NCPA, and to raise rates, tariffs, fees or other sources of Revenue.

**3.2 Legal Opinion.** At the time of making a request for a Transaction, the Member shall advance to NCPA, if required by NCPA, the estimated fee expense for obtaining the opinion of a nationally ranked municipal bond law firm (i) that the legal capacity of the Member to delegate the authority to execute and deliver the contract for the Service or Transaction from the governing body to a Member employee or to NCPA, and bind the Member with legal, valid, binding, and enforceable obligations, is without ambiguity under any applicable charter, ordinances, state and federal laws, and regulations, and (ii) that the requested Transaction will not result in any risk of losing the tax exemption for the interest paid on any of the tax exempt obligations of NCPA.

**3.3 Continuing Disclosure.** Annually the Member shall present NCPA with its audited financial statements. NCPA may request the Member to report contemporaneously in writing on significant events that may materially adversely affect the Member's financial capability to timely pay and retire all of the costs and liabilities associated with any outstanding Transaction.

#### **Article 4 – REPRESENTATIONS AND WARRANTIES**

4.1 **Initial Representations and Warranties.** On the Effective Date and the date of entering into each Transaction, the Member represents and warrants to NCPA that:

- (i) it is duly organized, validly existing and in good standing under the laws of California and of the United States;
- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and each Transaction (including any Confirmation accepted in accordance with this Agreement);
- (iii) the execution, delivery and performance of this Agreement and each Transaction (including any Confirmation accepted in accordance with this Agreement) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Agreement, each Transaction (including any Confirmation accepted in accordance with this Agreement), and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation



enforceable against it in accordance with its terms; subject to any Equitable Defenses.

- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any legal proceedings or investigations that could materially adversely affect its ability to perform its obligations under this Agreement and each Transaction (including any Confirmation accepted in accordance with this Agreement);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement and each Transaction (including any Confirmation accepted in accordance with this Agreement);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and each Transaction (including any Confirmation accepted in accordance with this Agreement) and as to whether this Agreement and each such Transaction (including any Confirmation accepted in accordance

with this Agreement) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of NCPA in providing Advisory Services, and the Member is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement and each Transaction (including any Confirmation accepted in accordance with this Agreement); and

- (ix) it has entered into this Agreement and each Transaction (including any Confirmation accepted in accordance with this Agreement) in connection with the conduct of its public service utility enterprise and it has the capacity or ability to make or take delivery of all products referred to in any Transaction to which it is a party.

**4.2 Further Representations and Warranties.** On the Effective Date and the date of entering into each Transaction, the Member further represents and warrants to NCPA that: (i) all acts necessary to the valid execution, delivery and performance of this Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the laws of the State of California and the charter, ordinances, bylaws or other regulations, (ii) all persons making up the governing body of the Member are the

duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the state and local, and other applicable law, (iii) entry into and performance of this Agreement and each Transaction by the Member are for a proper public purpose within the meaning of all relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Agreement does not extend beyond any applicable limitation imposed by the relevant constitutional, organic or other governing documents and applicable law, (v) the Member's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures or agreements to which it is a party, and all other relevant constitutional, organic or other governing documents and applicable law; (b) not subject to any prior claim under any and all bond ordinances or indentures or agreements to which it is a party, and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all of the Member's obligations hereunder and under each Transaction and (c) are payable from operating funds of the Member, (vi) entry into and performance of this Agreement and each Transaction by the Member will not adversely affect the exclusion from gross income for federal income tax purposes

of interest on any obligation of the Member or NCPA otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of the Member or create any kind of lien on, or security interest in, any property or revenues of the Member which, in either case, is proscribed by any provision of any relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

**4.3 Primacy of NCPA Projects.** Notwithstanding the availability of NCPA personnel and equipment the Member acknowledges and agrees that the first priority for NCPA personnel are the other NCPA projects in which more than one member participates, and that the Services and Transactions that NCPA provides under this Agreement are subordinate to NCPA's duties to serve the other members.

## **Article 5 – APPROVED TRANSACTIONS**

**5.1 Preparation of Contract Form Risk Disclosure Statements.** At Member's request, NCPA shall prepare a Risk Disclosure Statement to inform the Member of the risks involved in Contract Forms for which the Member requests approval.

**5.2 Governing Body Approval of Contract Forms.** Transactions shall be executed only on Contract Forms approved by the Member's governing body by resolution or by Member's manager with written delegated authority, after presentation of the complete form, and authorized deviations, as well as the Risk Disclosure Statement.

**5.3 Preparation of Counterparty Risk Disclosure Statements.** At Member's request NCPA shall prepare a Counterparty Risk Disclosure Statement to inform the Member or Member's manager with written delegated authority of the risks of entering Transactions with the proposed Counterparties.

**5.4 Governing Body Approval of Counterparty Lists.** Transactions shall be entered only with Counterparties approved by the Member's governing body by resolution or by Member's manager with written delegated authority, in conjunction with any requested Counterparty Risk Disclosure Statement.

**5.5 Preparation of Contract Damages Risk Disclosure Statements.** NCPA shall prepare a Contract Damages Risk Disclosure Statement for each Transaction to inform the Member or Member's manager of the risks of entering a particular Transaction. Member acknowledges that such Contract Damages Risk Disclosure Statements, while representing NCPA's understanding of the risks inherent in a particular Transaction, may not fully encompass all such risks. NCPA shall not be liable to Member for any failure to fully disclose risks to

Member, and Member acknowledges its responsibility to undertake due diligence with respect to any proposed Transaction.

#### **5.6 Governing Body Adoption of Contract Damages Risk**

**Limitations.** Transactions shall be entered only after the Member's governing body has approved by resolution, or after approval by Member's manager with written delegated authority, the particular Transaction after presentation by NCPA of the Contract Damages Risk Disclosure Statement and Member's governing body by resolution or Member's manager with written delegated authority in writing has adopted the following limits:

**5.6.1 Limits on Terms of Contracts.** The Member has adopted by resolution or Member's manager with delegated authority has adopted the following limits on terms of Contracts that may be used in Transactions: **None.**

**5.6.2 Limits on Net Present Value at Risk During Terms of Contracts.**

The Member has adopted by resolution or Member's manager with delegated authority has adopted the following limits on the net present value at risk during the terms of Contracts approved by the Member for Transactions: **None.**

### **Article 6 – OPERATING ACCOUNT AND SECURITY**

**6.1 Operating Account.** The Operating Account is an account established at NCPA pursuant to this Agreement. The Operating Account is established to: (i) make timely payments to NCPA under this Agreement and to a Counterparty pursuant to a Transaction and to protect NCPA from potential Member default by providing funds and time to cure, (ii) to bridge timing differences between the receipt of payments from the Member and the date payments are due a Counterparty, (iii) satisfy any security deposit requirements, and (iv) provide security against Member default.

**6.2 Initial Amount.** Before the effective date of a Transaction, the Member shall deposit in the Operating Account an amount equal to the highest three (3) months of projected Counterparty invoices for the succeeding twelve (12) months. NCPA shall maintain a detailed accounting of the Operating Account. Interest earned on the Operating Account shall be credited to the Member. Any losses in the Operating Account, due for example to the compulsory sale of investments to comply with a requirement of the Counterparty, shall be allocated to the Member. Provided, however, that in the event that the Counterparty to any Transaction is willing to accept contract terms such that NCPA is required to pay the Counterparty only as, if, when and to the extent that NCPA is paid by the Member, then to that extent and with respect to

that Transaction the amount deposited into the Operating Account shall be an amount equal to the highest one (1) month of projected Counterparty invoices.

**6.3 Periodic Reviews.** Prior to the effective date of a Transaction and at least quarterly thereafter, NCPA shall review the balances in the Operating Account to ensure the amount is equal to the current projection of the highest three (3) months of the Member's projected Counterparty invoices for the succeeding twelve (12) months. Any funds in excess of one hundred ten percent (110%) of this amount shall be credited to the Member. If the funds on deposit in the Operating Account are less than ninety percent (90%) of this amount, NCPA shall prepare an invoice to the Member who shall remit such funds within thirty (30) days of the invoice date.

**6.4 Emergency Additions.** In the event that the funds in the Operating Account are insufficient to allow payment of a Counterparty invoice, NCPA shall notify the Member and then prepare and send a special or emergency assessment to the Member.

**6.5 Return of Funds.** On the termination of this Agreement and all Transactions, the Member may apply to NCPA for the return of its Operating Account funds ninety (90) days after the effective date of such termination. NCPA shall, in its sole discretion, as determined by a vote of the Commission, excluding the vote of the Member, estimate the then outstanding liabilities of the



Member, including any estimated contingent liabilities, such as by way of example Counterparty invoices subject to dispute or to revision by the Counterparty or the Federal Energy Regulatory Commission, and retain all such funds until all such liabilities have been fully paid or otherwise satisfied in full. NCPA may apply any remaining Operating Account funds to any remaining obligation of the Member, including but not limited to revised Counterparty invoices.

**6.6 Counterparty Security Deposit.** Any security or other deposit required by a Counterparty for a Transaction shall be provided by the Member prior to the date NCPA provides any Agency Services and shall be maintained as may be required thereafter.

**6.7 Changes in Security.** Any changes in security or other deposits required by the Counterparty may be released by NCPA from the Operating Account, and NCPA shall invoice the Member within ten (10) working days for the total NCPA released to the Counterparty.

**6.8 General Operating Reserve Election:** In connection with fulfilling the Operating Account requirements of this Agreement, Member may elect to maintain the funds required under sections 6.1 through 6.7 above through its individual account in the NCPA General Operating Reserve (G.O.R.). If Member chooses to satisfy its Operating Account requirements in this manner, it will

provide NCPA with an irrevocable Letter of Direction for NCPA to utilize Member's G.O.R in this manner, provided however, nothing herein shall prohibit NCPA and Member from subsequently establishing an escrow account with an independent financial institution in place of holding the aforementioned deposit in the NCPA G.O.R.

## **Article 7 – PAYMENTS AND DEFAULTS**

**7.1 Billing and Payment.** Payments by Member for Services shall be made in advance. Monthly billing statements prepared by NCPA shall be sent to the Member showing the Member's unpaid balance for Transactions and Services and other expenses relating to this Agreement estimated by NCPA for the succeeding month. This information may be provided on monthly billing statements prepared by NCPA pursuant to other Project Agreements with Member. NCPA will provide the monthly billing statements electronically if requested by the Member; otherwise NCPA shall mail the statements by U.S. Postal Service, first class postage pre-paid.

**7.1.1 Disputed Monthly Billing Statement.** In case any portion of any billing statement received by Member from NCPA shall be in bona fide dispute, Member shall pay NCPA the full amount of such billing statement and, upon determination of the correct amount,

the difference between such correct amount and such full amount, if any, shall be credited to Member by NCPA.

**7.2 Application of Operating Account.** NCPA may apply the Member's Operating Account to the payment of any portion of the monthly billing statement. If Member does not timely pay the billing statement, Application of such funds shall not relieve the Member from any late payment charges.

**7.3 Late Payments.** Amounts shown on each billing statement are due and payable at the time noted on the invoice, but not later than thirty (30) days after the date of the invoice, except that any amount due on a Friday, holiday or weekend may be paid on the following working day. Any amount due and not paid by the Member shall bear interest at the per annum prime rate (or reference rate) of the Bank of America NT & SA then in effect, plus two percent per annum computed on a daily basis until paid.

**7.4 Settlement Data.** NCPA will make settlement data, including underlying data received from a Counterparty, available to the Member.

**7.5 Audit Rights.** The Member shall have the right to audit at its expense any data created or maintained by NCPA pursuant to this Agreement or pursuant to a Transaction on thirty (30) days written notice, unless otherwise agreed by the Member and NCPA.

**7.6 Failure To Pay.** If the Member fails to pay any amount due to NCPA within thirty (30) days of the date of the estimated or final invoice enumerating such amounts, the Member is in default and material breach under this Agreement.

**7.7 Other Material Breaches.** If the Member is in default or in breach of any of its covenants under any other agreement with NCPA, it shall also be considered in material default of this Agreement.

**7.8 Cure Period.** Upon written notice by NCPA, the Member shall cure any default within five (5) working days.

**7.9 Cure of Defaults.** A default shall be cured by the payment of any monies due NCPA, including any late payment charges, and repayment of any funds drawn from the Operating Account. A default under any other agreement with NCPA shall be cured by compliance with the covenant.

**7.10 Remedies in the Event of a Material Default.** NCPA may suspend the provision of any Agency Service or Advisory Service to the Member with a default which has not been cured within the Cure Period, including deducting sums in default from the Operating Account of the defaulting Member, demanding further assurances, and taking any other legal or equitable action before or after the Cure Period to compel the correction of the default, as for example, to mandate the collection of a surcharge to produce Revenues to secure

the cure of the default, (and the selection of one remedy shall not preclude the use of other remedies), on behalf of NCPA and other Members (in which event the defaulting Member shall not have the right to vote while such defaulting Member is in material default as determined by the NCPA Commission).

**7.11 Obligations in the Event of Default.** In the event that the Member's share of the Operating Account is insufficient to cover all invoices related to a Transaction or Service provided to the defaulting Member, (i) the defaulting Member shall cooperate in good faith with NCPA and shall cure the default as rapidly as possible, on an emergency basis, taking all such action as is necessary, including, but not limited to, drawing on its cash-on-hand and lines of credit, obtaining further assurances by way of credit support and letters of credit, and taking all such other action as will cure the default quickly; and provided, however, (ii) that neither NCPA nor any other member shall be liable under this Agreement for the obligations of the defaulting Member, and the Member shall be solely responsible and liable for performance of its obligations under this Agreement and each Transaction.

## **Article 8 – TERM OF THIS AGREEMENT**

**8.1 Term of This Agreement.** The term of this Agreement will be ten (10) years from its Effective Date. Six (6) months prior to the fifth-year anniversary date, the Parties will meet to review the Agreement. During the review period and following good-faith negotiations to resolve outstanding issues, either Party may terminate the Agreement. Notwithstanding the foregoing, either Party may, at any time during the term of the Agreement, terminate this Agreement on a date at least ninety (90) days after delivery of a written notice of termination to the other Party, provided that, no termination shall become effective until the termination of all Transactions.

## **Article 9 – NO IMMUNITY CLAIM**

**9.1 No Immunity Claim.** The Member warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (i) suit, (ii) jurisdiction of a court (including a court located outside the jurisdiction of its organization), (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment.

## **Article 10 – MEMBER COVENANTS**

The definitions in this Article 10 apply to the covenants in section 10.3 and elsewhere in this Agreement.

**10.1 Electric System.** Electric System means, with respect to the Member, all properties and assets, real and personal, tangible and intangible, of the Member now or hereafter existing, used or pertaining to the generation, transmission, transformation, distribution and sale of electric capacity and energy, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent the Member is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described purposes, only the Member's ownership interest in such asset or property or only the part of the asset or property used for electric purposes shall be considered to be part of its Electric System.

**10.2 Revenues.** Revenues means, with respect to the Member, all income, rents, rates, fees, charges, and other moneys derived by the Member from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing, (i) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System, (ii) the earnings on and

income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System, and (iii) the proceeds derived by the Member directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System, but the term Revenues shall not include (a) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Member or (b) contributions from customers for the payment of costs of construction of facilities to serve them.

**10.3 Member Covenants.** The Member covenants and agrees to (i) establish and collect rates and charges for the services and commodities provided by its Electric System sufficient to provide Revenues adequate to meet its obligations under this Agreement and all Transactions combined and to pay all other amounts payable from, and all lawful charges against or liens upon, the Revenues; (ii) make payments under this Agreement from the Revenues of, and as an operating expense of, its Electric System; (iii) make payments under this Agreement whether or not there is an interruption in, interference with, or reduction or suspension of services provided under this Agreement and any transaction (such payments are not subject to any reduction, whether by offset or otherwise, and regardless of whether any dispute exists); and (iv) operate its Electric System and the business in connection therewith in an efficient manner



and at reasonable cost and to maintain its Electric System in good repair, working order, and condition.

## **Article 11 – DELEGATION OF MEMBER AUTHORITY**

**11.1. Delegation to Member Agent.** The Member hereby designates as its authorized agent, the Member manager, to whom by resolution the Member has delegated its authority to execute on its behalf forms of contracts pursuant to this Agreement for use in Transactions subject to the Contract Damages Risk Limitations adopted by the Member's governing body pursuant to section 5.6.

**11.2. Delegation to NCPA.** The Member by resolution or Member's manager with written delegated authority will delegate to NCPA all of the Member's governing body's authority to enter into a Transaction with the delegation to NCPA confirming an Agency Service or Power Procurement Service for such Transaction. Such delegation shall not be revoked by Member or Member's manager during the term of the Transaction.

## **Article 12 – TRANSACTION LITIGATION**

**12.1 Transaction Litigation.** In the event of bankruptcy or insolvency of Member or litigation, dispute resolution, governmental inquiry, including investigations or legislative inquiries, relating to any matter involving this

Agreement or any Service or Transaction, NCPA may select Counsel of its choice to advise and represent NCPA and the Member, and the Member shall pay NCPA for such expenses, as billed pursuant to this Agreement. Provided, however, that NCPA will not initiate litigation against third persons related to or arising out of this Agreement without Member's concurrence.

### **Article 13 – UNCONTROLLABLE CIRCUMSTANCES & SUSPENSION OF PERFORMANCE**

13.1 **Definition.** In this Agreement "Uncontrollable Circumstances" shall mean acts, events or conditions not reasonably foreseeable by a Party which prevent the affected Party from performing its obligations under this Agreement, except the obligation for the payment of money, if and only if such acts, events or conditions and their effects (i) are beyond the reasonable control of such Party (or any third Party over whom such Party has control), (ii) are not reasonably avoidable, (iii) cannot be mitigated or eliminated through reasonably available alternative actions, and (iv) are not a result of the willful or negligent action or inaction of such Party or of any third Party over whom such Party has control.

Examples of Uncontrollable Circumstances include, but are not limited to, the following:

- 13.1.1 An act of God, landslide, lightning, earthquake, fire, explosion, storm, flood, or weather conditions precluding construction activity from progressing;
- 13.1.2 Acts of a public enemy, war, blockade, insurrection, strike, riot or civil disturbance, sabotage or similar occurrence or a mandate, directive, order, or restraint of any governmental, regulatory or judicial body or agency, or the exercise of the power of eminent domain, police power, inverse condemnation or other taking by or on behalf of any public, quasi-public or private entity; or
- 13.1.3 A Change in Law. In this Agreement, a Change in Law shall mean a material change in the requirements of the Scope of Services or the operation or maintenance of the Project, made by a governmental authority, that becomes effective on or after the date of this Agreement.

**13.2 Suspension of Performance.** The suspension of performance due to Uncontrollable Circumstances shall be no longer than reasonably required, and the Party suffering the Uncontrollable Circumstances shall use its best reasonable efforts to overcome such circumstances and partially or fully remedy its inability to perform. The Party suffering the Uncontrollable Circumstance

shall give the other Party notice that is reasonable under such circumstances, including written notice as soon as practicable.

#### **Article 14 - INDEMNIFICATION, DEFENSE, AND RELEASE**

**14.1 Indemnity Obligation of Member.** The Member hereby assumes all responsibility and liability for the Transactions and Services provided under the Agreement as if they were performed by the Member's employees and accordingly intends to protect NCPA, its member entities, governing officials, officers, agents, and employees against claims or losses of any kind whatsoever resulting from Transactions and Services provided pursuant to this Agreement. The Member is willing to take on such complete responsibility as an inducement to NCPA to enter into this Agreement. NCPA would not enter into this Agreement absent such inducement for NCPA's sole source of revenue comes from its members, which cannot be exposed to the risks of loss or damage due to Transactions, Services, or this Agreement. Thus, the Member (the "Indemnifying Party") agrees to indemnify, defend and hold harmless NCPA and its members, including their respective governing officials, officers, agents, and employees ("Indemnified Party or Parties"), from and against any and all claims, administrative actions, suits, losses, damages, expenses and liability of any kind or nature, including, without limitation, reasonable attorneys' fees ("Claim" or

collectively “Claims”) including but not limited to those caused by any breach of contract, negligence, active or passive, gross negligence or willful misconduct of the Indemnifying Party, its officers, employees, subcontractors or agents, to the maximum extent permitted by law, but only as to Claims related to this Agreement.

**14.2 Notice and Defense.** Promptly after receipt by an Indemnified Party of any Claim or notice of a Claim or the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in section 14.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party or Parties shall, at the expense of the Indemnifying Party, have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party or Parties.

**14.3 Failure to Assume Defense.** Should any of the Indemnified Parties be entitled to indemnification under section 14.1 as a result of a Claim by a third Party, and should the Indemnifying Party fail to assume the defense of such Claim after reviewing notification thereof as provided in section 14.2, then such Indemnified Party may, at the expense of the Indemnifying Party, contest or settle such Claim. To the extent that any of the Indemnified Parties is required to initiate and prevails in legal proceedings against the Indemnifying Party to enforce rights under this Article, the Indemnifying Party shall pay all costs and attorneys' fees incurred by the Indemnified Party in enforcing its rights. In addition to the foregoing, a failure to assume defense as provided may be deemed by NCPA a material breach of this Agreement.

**14.4 Release and Covenant Not to Sue.** The Member hereby forever releases and discharges NCPA, its members, governing officials, officers, agents, employees, and subcontractors (Released Parties) from any and all liabilities, claims, demands or causes of action that the Member may hereafter have for injuries, damages, or losses of any kind whatsoever arising out of the Transactions, Services or this Agreement performed or not performed, or inadequately performed by NCPA, including, but not limited to, losses caused by the passive or active negligence of the Released Parties or hidden, latent, or obvious defects in equipment or materials used.

The Member understands and acknowledges that the Project and the Services have inherent dangers that no amount of care, caution, instruction or expertise can eliminate and the Member expressly and voluntarily assumes all risk of death, personal injury, damages or losses of any kind whatsoever sustained in connection with the Project and the Services, including the risk of passive or active negligence of the Released Parties, or hidden, latent, or obvious defects in the materials used.

The Member hereby forever covenants not to sue the Released Parties for any injuries, damages, or losses, or liabilities, claims, demands or causes of action related thereto, to which the foregoing release applies.

## **Article 15 - GENERAL PROVISIONS**

**15.1 Independent Contractor.** NCPA shall be an independent contractor with respect to the Services to be performed hereunder. Neither NCPA nor its subcontractors, nor their agents or employees, shall be deemed to be the servants, employees, or agents of the Member, notwithstanding Article 14.

**15.2 Occupational Safety and Health Act.** The Member shall design, equip, and maintain and operate in accordance with all applicable rules, regulations, orders, standards and interpretations promulgated under the Occupational Safety and Health Act (1970) (OSHA), as amended and in effect as

of the day of execution of this Agreement or such similar act as adopted by the State of California, if applicable.

**15.3 Proprietary Information.** To the extent permitted by law, in particular the California Public Records Act, the Parties shall maintain the confidentiality of proprietary information.

**15.4 Patents.** The Member shall defend, indemnify and hold harmless NCPA from any suit or action brought against NCPA based on a claim that any item, materials or equipment procured pursuant to this Agreement, or any part thereof, furnished or specified by NCPA or the Member hereunder or any use thereof for purposes of this Agreement, constitutes an infringement of any claim of patent.

**15.5 Binding Effect: Successors and Assigns.**

15.5.1 This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assignees.

15.5.2 Neither Party hereto shall assign or convey any of its rights, titles or interests under this Agreement without the prior written consent of the other Party hereto.

**15.6 Not for Benefit of Third Parties.** This Agreement and each and every provision thereof is for the exclusive benefit of the Parties hereto and not



for the benefit of any other party except that the other member entities are intended to benefit from the protections provided them in this Agreement in Article 14.

**15.7 Choice of Law.** This Agreement is made and is to be performed in California and any dispute arising therefrom shall be governed and interpreted in accordance with California laws.

**15.8 Article Headings and Subheadings.** All article headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

**15.9 No Waiver.** No waiver by a Party of any breach or default by the other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach of default in the performance by such other Party of the same or any other obligations of such other Party hereunder. The giving of a waiver by a Party in any one instance shall not limit or waive the necessity to obtain such Party's waiver in any future instance. No waiver of any rights under this Agreement shall be binding unless it is in writing signed by the Party waiving such rights.

**15.10 Good Faith and Fair Dealing.** The Parties agree to deal fairly and to act in good faith in the performance or enforcement of this Agreement. Wherever this Agreement requires a consent or approval of a Party hereto, such

consent or approval shall not be unreasonably withheld or delayed except as otherwise specifically provided herein.

**15.11 Severability.** In the event that any of the provisions of this Agreement, or portions or applications thereof, are held to be unenforceable or invalid by any court of competent jurisdiction, the Member and NCPA shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

**15.12 Legal Capacity.** Each Party represents and warrants that it has the legal capacity to enter into this Agreement and to perform all obligations undertaken herein.

**15.13 No Counterparts.** This Agreement and any amendments will not be executed in counterparts but in one or more duplicate originals which shall constitute but one and the same instrument.

**15.14 Further Assurances.** If either Party reasonably determines that any further instruments, representation of assurance of payment, or performance, or any other things are necessary or desirable to carry out the terms of this Agreement, the other Party will execute and deliver all such instruments and

assurances and do all such things as the first Party reasonably deems necessary or desirable to carry out the terms of this Agreement.

**15.15 Hazardous Waste.** Although it is not presently contemplated that any Service or Transaction will involve “Hazardous Waste,” if on the contrary they do, then this section 15.15 shall apply. “Hazardous Waste” means (A) any product, substance, chemical, element, compound, mixture, solution, material, pollutant, contaminant or waste whose presence, nature, quantity or intensity of use, manufacture, processing, treatment, storage, disposal, transportation, spillage, release, or effect, either by itself or in combination with other materials, is regulated, monitored, or subject to reporting by any federal, state or local government entity; (B) those terms that are included within the definitions of “hazardous substances”, “hazardous materials”, “hazardous waste”, “extremely hazardous substances”, “toxic substances”, or “oil and hazardous substances”, as defined in one or more of the following environmental laws: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601 *et seq.* (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Sec. 11001 *et seq.* (“EPCRTKA”); the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 *et seq.* (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. Sec. 2601 *et seq.* (“TSCA”); the Federal Water

Pollution Control Act, 33 U.S.C. Sec. 1251 *et seq.* (the “Clean Water Act”); the Clean Air Act, 42 U.S.C. Sec. 7401 *et seq.* (“CAA”); the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 5101 *et seq.* (“HMTA”); the Safe Drinking Water Act, 42 U.S.C. Sec. 300f *et seq.* (“SDWA”), or comparable state cleanup statutes, and in the regulations promulgated pursuant to said laws, all as amended from time to time; or (C) any material, pollutant, substance or waste that comprises, in whole or in part, includes, or is a by-product or constituent of (i) petroleum (including crude oil or any fraction thereof that is not specifically listed or designated as a hazardous substance, and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel), (ii) asbestos, (iii) polychlorinated biphenyls, (iv) flammables or explosives, (v) biochemical agents, or (vi) radioactive materials.

If, during the course of performing the Services or Transactions, either Party becomes aware of any Hazardous Waste that exists on or under the location of the Service or Transaction, whether or not created or brought on the location by a Party, the Party that so became aware shall report such condition to the Member in writing immediately and before disturbing (or further disturbing) the Hazardous Waste. NCPA shall not be liable for any Hazardous Waste on or under the location notwithstanding the fact that NCPA may have created, brought on, or released the Hazardous Waste into, over, on, or under the

location. The Member shall be solely liable for any Hazardous Waste at the location because of NCPA or any of its employees or subcontractors, and the Member shall perform all cleanup, removal, remediation and disposition services with respect thereto. In the event NCPA encounters Hazardous Waste at the location, NCPA shall take reasonable actions necessary to mitigate costs to the Member or liability of the Member due to such Hazardous Waste. The cost of actions taken by NCPA pursuant to this section shall be fully reimbursed by the Member to NCPA.

**15.16 Status of Parties and Regulatory Compliance.** The Parties acknowledge that this Agreement is formed between two public agencies. Neither Party shall have any claim against the members, governing officials, officers, employees or agents of either Party.

The Member is subject to the regulatory compliance requirements of several agencies. The Member shall be solely responsible for, and shall reimburse NCPA for any costs of compliance with any permits or license conditions, including any fines or penalties, to the maximum extent permitted by law.

**15.17 NCPA's Organization.** The Member is responsible for assuring for itself that NCPA's personnel are appropriately trained, educated, and skilled to competently perform the Services. The Member acknowledges and agrees that

NCPA makes no warranties or representations regarding the qualifications of its employees, agents, and subcontractors.

**15.18 Acknowledgments and Interpretation.** The Parties acknowledge and agree that the terms and conditions of this Agreement have been freely and fairly negotiated. The Parties acknowledge that in executing this Agreement they rely solely on their own judgment, belief, and knowledge, and such advice as they may have received from their own counsel, and they have not been influenced by any representation or statements made by any other Party or its counsel. No provision in this Agreement is to be interpreted for or against any Party because that Party or its counsel drafted such provisions.

**15.19 Default Termination.** Upon the occurrence of a material default, the non-breaching Party shall notify in writing the breaching Party of its intent to terminate this Agreement if the breach is not cured within thirty (30) days. If the breaching Party does not cure the event of default within such thirty (30) day period, the non-breaching Party may immediately terminate this Agreement for Default. Written notice of termination shall be delivered to the breaching Party at the address shown on page one (1) of this Agreement or as changed. Either party may provide a new address for such notice at any time by providing written notice to the other party.

**15.20 Default Termination Remedies.** In the event of a default termination for material breach or abandonment by Member, NCPA may by appropriate court action or actions, either at law or in equity, preserve its position to recover damages and expenses associated with the breach; and/or pursue, concurrently or separately, other remedies available in law, in equity or in bankruptcy in anticipation of pursuing its remedies pursuant to Article 16 of this Agreement.

**15.21 Survival.** The terms of this Agreement shall survive any termination or cancellation hereof to the extent necessary to allow a Party to enforce any remedy granted hereunder in connection with such termination or cancellation. The terms of Article 14 of this Agreement, entitled “Indemnification, Defense, and Release” shall survive any termination or cancellation, in perpetuity as to the Release, and otherwise for ten (10) years and one day after the effective date of termination or cancellation.

## **Article 16 - DISPUTE RESOLUTION**

**16.1 Negotiations.** The Parties will attempt in good faith to resolve through negotiation any dispute, arising out of or relating to this Agreement. Either Party may initiate negotiations by providing written notice in letter form to the other Party, setting forth the subject of the dispute and the relief requested.

The recipient of such notice will respond in writing within five (5) days with a detailed statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each Party with full settlement authority will meet at a mutually agreeable time and place within ten (10) days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting by negotiations, they shall consider mediation.

During any dispute and negotiation the Member shall continue to timely pay NCPA for Services rendered and Transactions for which obligations remain unsatisfied, even though such dispute may concern those Services or Transactions. NCPA agrees to continue performing the Services, provided that no payment due from the Member is overdue.

**16.2 Mediation.** The Parties agree that any and all disputes arising out of or relating to this Agreement that are not resolved by their mutual agreement after negotiations pursuant to section 16.1, should be submitted to mediation before JAMS, or its successor or similar alternative dispute resolution (ADR) organization of respected, retired judges, or to a private judge, as the Member may determine, in its reasonable discretion, and with the written consent of NCPA, provided that the Member will be responsible for all of the expenses of



mediation. Either Party may commence the mediation process called for in this Agreement by filing a written request for mediation with JAMS, its successor, or another ADR organization or private judge with a copy to the other Party. The Parties agree that they will participate in the mediation in good faith when and if the Member determines to invoke mediation as a dispute resolution remedy, at its expense.

**16.3 Waiver of Certain Judicial Rights.** If the Parties fail to either negotiate or mediate a mutually satisfactory resolution of any dispute, then upon written notice given twenty (20) days in advance, either Party may terminate this Agreement, subject to any unpaid or unreimbursed compensation or costs payable by the Member to NCPA, and without affecting the survival of Article 14, entitled “Indemnification, Defense, and Release” for its full term, notwithstanding any default hereunder by NCPA.

## **Article 17 – LIMITATION OF LIABILITY**

**17.1 Limitation of Liability.** To the extent the law allows, NCPA, its members, governing officials, officers, employees, and agents shall have no liability to the Member under this Agreement with respect to all claims however caused, arising out of the performance or non-performance of the Services and obligations under this Agreement, whether based in contract, warranty, tort

(including negligence), strict liability, or otherwise, including without limitation, liability for consequential damages pursuant to Article 18. NCPA shall not be required to carry any insurance, and even if insurance is carried by NCPA, such insurance shall not be available to the Member for any claim, death, damages, injuries, losses of any kind whatsoever, unless, and solely to the extent, that the Member procures such insurance of its own accounts, and pays, and is solely responsible for any and all premiums and costs related to such coverage. If notwithstanding the foregoing limitations of this Section 17.1, liability is imposed, then such total liability shall be limited to the net present value of the expertise NCPA gained through this Agreement that is of value to its other members.

## **Article 18 – CONSEQUENTIAL DAMAGES**

**18.1 Consequential Damages.** NCPA, its members, governing officials, officers, employees, and agents (excluding counterparties) shall not be liable to the Member, for incidental, indirect, punitive, exemplary, special or consequential loss or damage arising out of or relating to this Agreement, including, but not limited to, loss of use, customer claims and damages, loss of revenue, loss of power sales, loss of electric system reliability, outages and cascading disturbances, principal office expenses, delay, loss by reason of plant

shutdown or inability to operate, increased cost of operating and maintaining the Project, debt service, rental payments or contractual damages incurred by the Member or to others. The Member is and will remain through the survival provisions of Article 15 of this Agreement, solely responsible for such risks, losses, damages and costs, however described; including consequential damages that may be suffered by NCPA, its members, governing officials, officers, employees, and agents (excluding counterparties) arising from this Agreement.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement on the Effective Date, having acknowledged and accepted the terms, conditions, promises, and covenants of this Agreement, as evidenced by the following signatures of the representatives of the Parties, who are represented and warranted to be fully and lawfully authorized, by all necessary official action, to execute and deliver this Agreement.

MEMBER:

NCPA:

CITY OF LODI

Northern California Power  
Agency

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Konradt Bartlam

Name: James H. Pope

Title: City Manager

Title: General Manager

APPROVED AS TO FORM:

D. STEPHEN SCHWABAUER, City Attorney  
JANICE D. MAGDICH, Deputy City Attorney

APPROVED AS TO FORM:

By: \_\_\_\_\_



By: \_\_\_\_\_

Michael Dean, General Counsel

ATTEST:

By: \_\_\_\_\_

RANDI JOHL, City Clerk

SINGLE MEMBER SERVICES AGREEMENT  
by and between the  
CITY OF LODI  
and the  
NORTHERN CALIFORNIA POWER AGENCY

ATTACHMENT A  
ADVISORY SERVICES

In accordance with the terms of the Agreement between Northern California Power Agency ("NCPA") and the City of Lodi ("Member"), NCPA may provide certain Advisory Services to Member, which includes technical, economic, financial, legal, risk and credit analysis, and other advice of a professional manner. Member has requested NCPA to provide the Advisory Services listed in this Attachment A, and NCPA has agreed to provide such Advisory Services in consideration of the costs of such activities as described herein.

**Scope of Advisory Services**

NCPA shall provide, at its discretion, Advisory Services to Member to assist Member in developing contract instruments to be utilized to consummate transactions in its own name for Energy and Renewable Energy Certificate ("REC") products. Such Advisory Services may include development of special terms and conditions to be used by Member in conjunction with industry standard contracts and/or development of bilateral contracts. NCPA may assist Member, through active and passive participation, in negotiation activities required to develop contract instruments and to consummate transactions. Notwithstanding the scope of Advisory Services provided herein, all Advisory Services supplied by NCPA to Member shall be in accordance with the terms and conditions of the Agreement.

**Cost of Advisory Services**

Member agrees to pay for any and all costs associate with NCPA's provision of Advisory Services. In accordance with Article 7 of the Agreement, all payments due from Member for Advisory Services shall be made in advance. Therefore, listed below is the estimated cost for the Advisory Services to be provided to Member. Upon completion of the Advisory Services, NCPA shall bill or credit Member for the difference between the estimated and actual costs of Advisory Services. Such invoicing will be conducted in accordance with the Agreement.

**Northern California Power Agency  
Single Member Services Agreement - City of Lodi  
Estimated Cost of Advisory Services**

**Scope: Development & Negotiation of Contract Instruments**

<u>Advisory Services (Estimated Costs)</u>	<u>Rate \$/Hr</u>	<u>Total Hours</u>	<u>Total Costs</u>
NCPA Staff Hourly Fee Basis	\$ 160	80	\$ 12,800
Legal Counsel Hourly Fee Basis	\$ 400	44	\$ 17,600
			<u>\$ 30,400</u>

<u>Advisory Services (# of Hours Staff/Legal Counsel)</u>	<u>NCPA Staff</u>	<u>Legal Counsel</u>
Contract Instrument Terms & Conditions Development	20	28
Development of REC Product Types	16	8
Request for Proposals / Limited Solicitation -- Evaluation	16	-
Contract Negotiations	8	4
Other Regulatory and Support Activities	8	4
Settlement & Operations	12	-
	<u>80</u>	<u>44</u>

The undersigned hereby approve the scope of Advisory Services and associated costs estimate described in this Attachment A, in accordance with the Agreement.

**CITY OF LODI**

**NCPA**

\_\_\_\_\_  
By: Konradt Bartlam  
City Manager

\_\_\_\_\_  
By: James H. Pope

Date:

Date:

APPROVED AS TO FORM:  
D. STEPHEN SCHWABAUER, City Attorney  
JANICE D. MAGDICH, Deputy City Attorney

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Dean  
General Counsel

**ATTACHMENT B**  
**MEMBER REQUEST**  
**ENERGY PURCHASE AUTHORIZATION & CONFIRMATION**

The City of Lodi (Member), hereby confirms its request to purchase from the Northern California Power Agency (NCPA) each of the energy products described below. Such purchase shall be made in accordance with the terms of the Single Member Services Agreement for Special Transactions between Member and NCPA, and this Energy Purchase Authorization and Confirmation, each as may be amended from time to time. Member acknowledges that NCPA may acquire each energy and energy-related product described below, for subsequent resale to Member, pursuant to the terms of each standard-form industry agreement identified below as directed by Member's Utility Director, or his designee, each of whom by the approval as to legal form below by Member's attorney is warranted to possess the necessary authority to enter into such transactions on behalf of Member.

Member requests to purchase all the energy products described below in items (1) through (8) and those listed in any attachment(s) hereto:

1. Period of Delivery: From \_\_-\_\_-\_\_ To \_\_-\_\_-\_\_
2. Schedule (Days and Hours): \_\_\_\_\_
3. Delivery Rate: \_\_\_\_\_
4. Delivery Point(s): \_\_\_\_\_
5. Contract Quantity: \_\_\_\_\_ Total MWhrs /Mcf
6. Type of Agreement (Check as Applicable)  
WSPP \_\_\_\_\_  
EEI \_\_\_\_\_  
ISDA \_\_\_\_\_  
NYMEX \_\_\_\_\_  
NAESB \_\_\_\_\_  
OTHER \_\_\_\_\_  
Additional Contract Terms are attached: yes \_\_; no \_\_
7. Authorized Contract or Strike Price Range: \_\_\_\_\_
8. Other: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature for Member  
Utility Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Approved as to Legal Form  
Attorney for Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
ATTEST: City Clerk

\_\_\_\_\_  
Authorized Signature for NCPA

\_\_\_\_\_  
Date

RESOLUTION NO. 2012-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING THE SINGLE MEMBER SERVICES  
AGREEMENT BY AND BETWEEN THE CITY OF LODI  
AND THE NORTHERN CALIFORNIA POWER AGENCY,  
AND FURTHER AUTHORIZING THE CITY MANAGER TO  
EXECUTE SAID AGREEMENT

=====

WHEREAS, on April 12, 2011, the Governor of the State of California signed California Senate Bill 2 of the First Extraordinary Session, SBX1-2, Chapter 1, Statutes of 2011, First Extraordinary Session, (SBX1-2), known as the California Renewable Energy Resources Act, which became effective on December 10, 2011; and

WHEREAS, SBX1-2 requires that the amount of electricity generated from eligible renewable energy resources be increased to an amount that equals at least 20% of the total electricity sold to retail customers in California by December 31, 2013, 25% by December 31, 2016 and 33% by December 31, 2020; and

WHEREAS, while Lodi will need to adopt a Renewable Energy Resources Procurement Plan (RPS Procurement Plan) to meet the requirements of SBX1-2, the California State Energy Commission (CEC) still has not published the details of the requirements for such RPS Procurement Plans, though they were required to do so no later than December 31, 2011; and

WHEREAS, staff anticipates bringing a RPS Procurement Plan to Council for approval in the first quarter of fiscal year 2012/13; and

WHEREAS, SB1X-2 requirements will require different amounts of varying types of renewable resources in various years; these different types are called Portfolio Content Categories (PCC), see Attachment A; and

WHEREAS, in anticipation of the RPS Procurement Plan staff has completed a preliminary analysis; based on this analysis it is expected that no net purchases will be required to meet SBX1-2 requirements through calendar year 2013; and

WHEREAS, analysis has also shown that Lodi has a surplus of the more valuable PCC 1 which includes renewable resource products that are scheduled from an eligible renewable energy resource directly into a California balancing authority; Lodi's surplus comes mostly from our entitlements to Northern California Power Agency (NCPA) geothermal plants; and

WHEREAS, this excess PCC 1 may be sold and replaced with a much less expensive PCC 3 resource; PCC 3 includes unbundled renewable energy credits that do not qualify under the criteria for other Content Categories; and this exchange of PCC types may result in savings to Lodi of as much as \$2 million this fiscal year; and

WHEREAS, NCPA is currently working to modify the Market Power Purchase Agreement (MPP) to enable NCPA to make these types of transactions for the MPP



Participants, which includes Lodi; unfortunately it is unlikely that the MPP can be modified in time to make the transactions that need to be completed this year; and

WHEREAS, Lodi itself has neither the time nor experience to complete these transactions on our own, in the available time frame; and

WHEREAS, NCPA has developed the Single Member Services Agreement (SMSA) and the attached scope of work (Advisory Services) to facilitate such independent transactions, by assisting their members in carrying out economic and timely transactions; and

WHEREAS, the SMSA will allow additional scopes of work to be attached to it in the future, as needed from time to time; any additional scopes of work will require separate approvals by both NCPA and Lodi; potential transactions that come out of this process will still need to be approved in accordance with Lodi's existing approval process.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Single Member Services Agreement by and between the City of Lodi and the Northern California Power Agency, Authorizing the City Manager to execute said Agreement, with administration by the Electric Utility Director.

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –  
NOES: COUNCIL MEMBERS –  
ABSENT: COUNCIL MEMBERS –  
ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2012-\_\_\_\_\_



## CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Adopt Resolution Authorizing the City Manager to Terminate the Professional Services Agreement with ZGlobal Engineering and Energy Solutions and Execute a Professional Services Agreement with GP Strategies of Amherst, New York for Compliance Services (\$60,000)

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Electric Utility Director

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**RECOMMENDED ACTION:** Adopt a resolution authorizing the City Manager to terminate the Professional Services Agreement with ZGlobal Engineering and Energy Solutions and execute a Professional Services Agreement with GP Strategies of Amherst, New York for Compliance Services in an amount not to exceed \$60,000.

**BACKGROUND INFORMATION:** On October 5, 2011 the City Council adopted Resolution No. 2011-152 authorizing the City Manager to execute a two-year Professional Services Agreement with ZGlobal Engineering and Energy Solutions of Folsom for Compliance Services.

In April 2012 City staff was informed ZGlobal's key compliance employee, Mary Jo Cooper, was leaving the firm. Ms. Cooper informed City staff she will be providing the same compliance services for GP Strategies of Amherst, New York as the Director of Transmission Services in California. ZGlobal will continue to provide this service, however to maintain continuity with the City's compliance program staff recommends terminating the existing agreement with ZGlobal and executing a new agreement with GP Strategies.

**FISCAL IMPACT:** No additional funding is required.

**FUNDING:** Included in FY2012/13 Budget Account Numbers 160601 and 160652.

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Jordan Ayers  
Deputy City Manager/Internal Services Director

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Elizabeth A. Kirkley  
Electric Utility Director

**PREPARED BY:** Elizabeth Kirkley, Electric Utility Director

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

## **AGREEMENT FOR PROFESSIONAL SERVICES**

### **ARTICLE 1 PARTIES AND PURPOSE**

#### **Section 1.1 Parties**

THIS AGREEMENT is entered into on June 6, 2012, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and GP Strategies Corporation (hereinafter "CONTRACTOR").

#### **Section 1.2 Purpose**

CITY selected the CONTRACTOR to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for the formulation of a partnership in the management of the North American Electric Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) compliance program (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

### **ARTICLE 2 SCOPE OF SERVICES**

#### **Section 2.1 Scope of Services**

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

#### **Section 2.2 Time For Commencement and Completion of Work**

CONTRACTOR shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY or on the date set forth in Section 2.6, whichever occurs first, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONTRACTOR shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be

counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall remain in contact with reviewing agencies and make all efforts to review and return all comments.

**Section 2.3 Meetings**

CONTRACTOR shall attend meetings as may be set forth in the Scope of Services.

**Section 2.4 Staffing**

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONTRACTOR of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONTRACTOR of any changes of CONTRACTOR's project staff prior to any change.

CONTRACTOR represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONTRACTOR represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

**Section 2.5 Subcontracts**

Unless prior written approval of CITY is obtained, CONTRACTOR shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

**Section 2.6 Term**

The term of this Agreement commences on June 6, 2012 and terminates upon the completion of the Scope of Services or on June 30, 2014, whichever occurs first.

## **ARTICLE 3** **COMPENSATION**

### **Section 3.1    Compensation**

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONTRACTOR shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

### **Section 3.2    Method of Payment**

CONTRACTOR shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONTRACTOR's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

### **Section 3.3    Costs**

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

### **Section 3.4    Auditing**

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Agreement. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

**ARTICLE 4**  
**MISCELLANEOUS PROVISIONS**

**Section 4.1 Nondiscrimination**

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any sub CONTRACTOR on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

**Section 4.2 ADA Compliance**

In performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

**Section 4.3 Indemnification and Responsibility for Damage**

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

**Section 4.4 No Personal Liability**

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

**Section 4.5 Responsibility of CITY**

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

**Section 4.6 Insurance Requirements for CONTRACTOR**

CONTRACTOR shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

#### **Section 4.7 Successors and Assigns**

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

#### **Section 4.8 Notices**

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi  
221 West Pine Street  
P.O. Box 3006  
Lodi, CA 95241-1910  
Attn: Electric Utility Director

To CONTRACTOR: GP Strategies Corporation  
25 North Pointe Parkway  
Amherst, New York 14228  
Attn: Mary Jo Cooper

#### **Section 4.9 Cooperation of CITY**

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

#### **Section 4.10 CONTRACTOR is Not an Employee of CITY**

CONTRACTOR agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONTRACTOR meet specific standards without regard to the manner and means of accomplishment thereof.

#### **Section 4.11 Termination**

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase.

Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

**Section 4.12 Confidentiality**

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by CONTRACTOR as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

**Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees**

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

**Section 4.14 City Business License Requirement**

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

**Section 4.15 Captions**

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.



**Section 4.16 Integration and Modification**

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

**Section 4.17 Contract Terms Prevail**

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

**Section 4.18 Severability**

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**Section 4.19 Ownership of Documents**

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

**Section 4.20 Authority**

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

**Section 4.21 Federal Transit Funding Conditions**

☐ If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit        apply to this contract. In the event of a conflict between the terms of this contract or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

**IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.**

**CITY OF LODI, a municipal corporation**

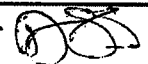
**ATTEST:**


\_\_\_\_\_  
**RANDI JOHL**  
City Clerk

\_\_\_\_\_  
**KONRADT BARTLAM, City Manager**

**APPROVED AS TO FORM:**  
**D. STEPHEN SCHWABAUER, City Attorney**  
**JANICE D. MAGDICH, Deputy City Attorney**

**CONTRACTOR: GP Strategies Corp.**

By: \_\_\_\_\_  


By:   
Name: **JOSEPH NASAL**  
Title: **Senior Vice President, GP Strategies**

**Attachments:**  
**Exhibit A – Scope of Services**  
**Exhibit B – Fee Proposal**  
**Exhibit C – Insurance Requirements**

**Funding Source: 180801.7323**  
**(Business Unit & Account No.)**

**Doc ID:**

**CArev.01.2012**



May 21, 2012  
GP-L-1138-12-013R4

Ms. Elizabeth Kirkley  
Lodi Electric Utility Director  
City of Lodi  
1331 South Ham  
Lodi, CA 95242

Via email:

Subject: Proposal to Provide Compliance Review Services for City of Lodi

Dear Ms. Kirkley:

On behalf of GP Strategies Corporation (GP Strategies), thank you for considering our NERC/WECC compliance management services. We are pleased to submit this proposal to assist City of Lodi Electric Utility Department (Lodi EUD) with identifying, responding to, and tracking requirements associated with the North American Electric Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC). We hope this letter provides you with the information you need to begin working with GP Strategies' team. We welcome any comments or suggestions you may have.

### **Service Overview**

These services offered are to provide Lodi EUD NERC/WECC compliance administration services that incorporate a customized Microsoft SharePoint platform for continuous tracking and audit readiness. The services assist Lodi EUD stay abreast and respond to NERC and WECC regulatory requirements, monitor process activities to ensure compliance completeness, accuracy, and timeliness. We will manage and support other activities to prepare for self-certifications, and audits, and report status of Lodi EUDs NERC/WECC compliance program to the Lodi EUD executive team. The services offered are on-going as defined in the scope of work.

### **Scope of Work**

Our approach involves providing ongoing services and support including access to a branded and individualized client site for compliance tracking. GP Strategies will support your compliance program by performing the following tasks:

1. Enhance, modify, and support the Lodi EUD SharePoint. The SharePoint solution is used to document the City's methodologies for complying with the standards and maintain evidence. Customized reporting forms have been developed to track and manage

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The information contained in this proposal is considered proprietary. It is furnished in confidence, with the understanding that it will not, without the permission of GP Strategies Corporation, be used or disclosed for other than evaluation purposes.

ongoing operational processes required as part of the compliance program. Support of the Lodi EUD SharePoint system to manage the compliance program includes:

- Providing five (5) licenses to access the Lodi EUD SharePoint portal as maintained by GP Strategies
  - Providing management of User Accounts at the direction of Lodi EUD Senior Management
  - Maintaining current list of applicable standards and requirements
  - Maintaining the repository of GP Strategy and Lodi's assessment and documentation on how Lodi EUD complies with the standards and requirements in the associated process. These include but are not limited to:
    - Sabotage recognition and reporting
    - Risk based assessment of critical assets
    - Bulk electric system disturbance identification and reporting
    - Facility interconnection requirements
    - Telecommunication and communication protocol
    - Energy emergency alert response
    - Capacity benefit margin
    - Long and short-term actual and forecast load assessment including demand side management products
    - Maintenance, testing, and monitoring of BES protection equipment
    - Under Frequency Load Shedding assessment and reporting
    - Protection System Misoperations
    - Relay settings documentation
    - Uniform line identifiers
  - Creating and maintaining association of standards and requirements with related processes for reporting purposes
  - Storing procedures prepared by GP Strategies and Lodi
  - Documenting and prioritizing risks
  - Monitoring controls
  - Developing compliance forms used to log Evidence of Compliance to applicable NERC Requirements for client as a Load Serving Entity (LSE) and Distribution Provider (DP)
  - Assisting with uploading evidence to the Lodi EUD SharePoint site
  - Developing workflows for reminders of compliance related deadlines
  - Tracking outstanding tasks logged on the SharePoint site for subject matter experts or process owners
2. Perform an assessment of all FERC approved NERC and WECC regulatory Standards compared to the City interconnection and Tariff agreements (NCPA, PG&E, and CAISO) to determine and document the applicability of the requirements. We will document the processes or methodologies, procedures, and equipment needed to comply with the requirements. We will provide the following services:
- A review of all existing materials for adequacy
  - Recommendations for improvement
  - Prepare procedures
  - Review evidence

- Obtain and review secondary evidence with the assistance of the City, identify where gaps exist and propose solutions to close gaps
- 3. Maintain current NERC compliance related procedures. These procedures include, but are not limited to:
  - Event Analysis (BES Disturbance, UFLS Event, Protection System Misoperation)
  - Facility Additions and Modifications
  - Model Data Submittals
  - NERC Alert Response
  - Protection System Maintenance
  - Risk Based Assessment Methodology
  - Sabotage Recognition and Reporting
- 4. Provide training programs for compliance related procedures and processes
  - Instructor-led training
  - GPiLEARN on-line compliance training
- 5. Support the Lodi EUD Internal Compliance Program (ICP) specific to NERC and WECC compliance standards and requirements by:
  - Prepare and submit quarterly status reports to Lodi EUD senior management that includes the:
    - Health of ICP
    - Status of any potential non-compliance activity
    - Status of mitigation plans for any non-compliance reports
    - Status on activities required to prepare for compliance with all new FERC approved standards
    - Summary and status of requests for standards authorization, new criteria, or rules that impact the City
  - Provide support for Standards, Compliance Application Notices, regional criterion development by either participation with development team or by providing comments and voting according to Lodi EUD direction
  - Provide summary notes from compliance group meetings and other industry forums to client
  - Develop communication materials to demonstrate a commitment to compliance
  - Coordinate the completion of the annual risk assessment
  - Perform annual internal audit and present the report of findings
  - One month prior to the WECC self-certification due date for each Standard, we will review compliance materials and issue a report of recommendations for Self-Certification to the Compliance Officer. The evidence of the review will be logged in preparation for a possible spot audit.
  - Complete WECC data reporting including but not limited to Self-Certification, Spot Audits, Off-Site and On-Site Audit materials. The audit preparation includes preparing all Reliability Standard Audit Worksheets (RSAWs) and evidence for spot audits, table top audits and on-sight audits. The evidence will be clearly identified in each document and electronically assemble in file folder structure for each requirement and sub-requirement of each Standard. The file folder will be provided to the process owner(s) for acceptance and senior management for

- certification. All auditor follow-up questions will be directed through GP Strategies to assure immediate and timely response.
- Review and monitor completion of mitigation plans for identified gaps, non-compliance, new Standards preparation, or relay Misoperations
  - Assist with interfacing with WECC, NERC, and FERC on compliance related issues
  - Assist with interfacing with PG&E, CAISO, NCPA, FBI and other entities to gather NERC and WECC Compliance related evidence
  - Assist with responding to NERC Alerts and NERC investigation requests.
  - Provide up to 24 man-hours of Non-Compliance management assistance. Requested assistance in excess of the 24 man-hours will be billed at our time and material rate of \$165/hr. (Note this service does not include legal support)
6. Perform annual review and update Internal Compliance Program (ICP) documents. The documents include but are not limited
- A description of the City's compliance management structure.
  - A description of the process for reporting and investigating potential violations.
  - A description of the City's mechanisms that allow for anonymity or confidentiality, whereby the City's employees and agents may report or seek guidance regarding potential or actual violations without fear of retaliation.
  - Overview awareness training to the City's governing authority, directors, management, and individual(s) who have been delegated with day-to-day operational responsibility for compliance to requirements.
  - A description of the City's program that prevents and detects violations including:
    - Training programs
    - Processes
    - Procedures
    - Controls
    - Self-audits
  - The City's incentives for its employees or agents to perform in accordance with the compliance program
  - The City's disciplinary measures for employees or agents engaging in violations and for failing to take reasonable steps to prevent or detect violations
  - Annual internal audit schedule for applicable regulatory standards
  - A description of City's process for self-certifying compliance to regulatory standards

### **Lodi Responsibilities**

Although GP Strategies proposed work provides coverage of all aspects of the Lodi EUD NERC/WECC program, Lodi EUD will retain responsibility for certain functions and tasks. These include but are not limited to:

- Review and approval of the documented Internal Compliance Program (ICP)
- Oversight and Ownership of the ICP
- Review and approval of all procedures
- Review and approval of all forms

- Review, comment and approval of the annual Risk Assessment
- Review, comment and approval of program controls
- Log data using approved forms. For example sabotage incidents, event driven outages, maintenance, control room entry logs, etc.
- Provide data or studies as required by NERC, WECC or other entities. For example loads and resource forecast, historical usages, modeling of facilities, system studies, etc.
- Perform reliability related process. For example protection system maintenance, relay settings, submit timely data, report Misoperations, report BES Disturbances, etc.
- Compliance with all Standards and Requirements
- Attend compliance training
- Review, comment and approval of all audit materials
- Review, comment and acceptance of status reports, internal audit reports, mock audit reports, self-certification preparation report, etc.
- Provide determination on compliance and determination for self-reporting

### **Project Costs**

GP Strategies proposes to perform the monthly service and support work associated with this program from June 06, 2012 through June 30, 2014, for the fixed price of \$54,577.

GP Strategies proposes the following billing milestones:

- |                                     |                   |
|-------------------------------------|-------------------|
| • June 06, 2012 – October 31, 2012  | \$1,100 per month |
| • November 01, 2012 – June 30, 2014 | \$2,583 per month |

In addition to the labor outlined above, any travel expenses requested by Lodi EUD of distances beyond 200 miles from City of Lodi will be billed at cost, plus a 15% administrative fee. GP Strategies anticipates 5 onsite visits per year. GP Strategies will request official approval for increase in project funding prior to incurring travel costs. GP Strategies will bill Lodi EUD monthly for any travel and living costs incurred.

Lodi EUD Purchase Order should reference this proposal number (GP-L-1138-12-013), and be forwarded to:

Ms. Helen Kelly  
General Physics Corporation  
6095 Marshalee Drive, Suite 300  
Elkridge, MD 21075  
Fax: 410-540-5304  
Email: [hkelly@gpstrategies.com](mailto:hkelly@gpstrategies.com)

Our billing terms are net 30 days, and this proposal will be valid through June 30, 2012.

### **Summary**

GP Strategies is uniquely qualified to provide this service to Lodi EUD. Mary Jo Cooper, our Director of NERC Compliance Services, has 5 years of experience working with clients just like Lodi EUD in support of their federal and regional regulatory standards and requirements. GP Strategies can provide Lodi EUD with the tools, knowledge and skills necessary to respond to the regulatory requirements applicable to your unique organization.

Thank you for the interest in GP Strategies NERC/WECC compliance administration services. We will follow up with you to ensure this proposal meets your needs and answer any questions you may have. In the meantime, please feel free to contact me at 916-833-3369 or [mjcooper@gpstrategies.com](mailto:mjcooper@gpstrategies.com) if you have any immediate questions.

Sincerely,

Mary Jo Cooper  
Director, T&D Services  
Energy Services

MJC/hk

cc     B Neff (GP Strategies)  
       M Brown (GP Strategies)  
       W Green (GP Strategies)



RESOLUTION NO. 2012-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY  
MANAGER TO TERMINATE A TWO-YEAR PROFESSIONAL SERVICES  
AGREEMENT WITH Z-GLOBAL ENGINEERING AND ENERGY SOLUTIONS OF  
FOLSOM AND EXECUTE A TWO-YEAR PROFESSIONAL SERVICES  
AGREEMENT WITH GP STRATEGIES OF AMHERST, NEW YORK FOR  
COMPLIANCE SERVICES

=====

WHEREAS, on October 5, 2012 the City Council adopted Resolution No. 2012-152 authorizing the City Manager to execute a two-year Professional Services Agreement with ZGlobal Engineering and Energy Solutions of Folsom for Compliance Services; and

WHEREAS, in April 2012 City staff was informed ZGlobal's key compliance employee, Mary Jo Cooper, was leaving the firm; and

WHEREAS, Ms. Cooper informed City staff she will be providing the same compliance services for GP Strategies of Amherst, New York as the Director of Transmission Services in California; and

WHEREAS, ZGlobal will continue to provide this service, however to maintain continuity with the City's compliance program staff recommends terminating the existing agreement with ZGlobal and executing a new agreement with GP Strategies; and

WHEREAS, no additional funding is required and is included in FY2012/13 Budget Account Numbers 160601 and 160652.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to terminate a two-year Professional Services Agreement with Z-Global Engineering and Energy Solutions of Folsom and execute a two-year Professional Services Agreement with GP Strategies of Amherst, New York for compliance services in an amount not to exceed \$60,000, with Administration by the Electric Utility Director.

BE IF FURTHER RESOLVED that the City may exercise an option to extend this contract one additional year on 30 days written notice prior to this contract's expiration, on the same terms and conditions set forth herein. If the City exercises this option, Contractor may increase its fee by an amount not to exceed six percent.

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2012-\_\_\_\_\_



TM

## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt Resolution Authorizing the City Manager to Execute an Agreement for Consulting Services with Matt Foskett Consulting, LLC for Electric Utility Rates and Resources Services (\$120,000)

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Electric Utility Director

---

**RECOMMENDED ACTION:** Adopt a resolution authorizing the City Manager to execute an agreement for consulting services with Matt Foskett Consulting, LLC for electric utility rates and resources services in an amount not to exceed \$120,000.

**BACKGROUND INFORMATION:** The Electric Utility Department requires consulting services for planning, evaluation, acquisition and operation of bulk power supplies and delivery resources as well as the development of electric utility rates.

The attached agreement for consulting services with Matt Foskett Consulting, LLC will provide these services as outlined in the scope of work shown on Attachment A. Mr. Foskett has over 30 years of experience in the electric utility industry.

**FISCAL IMPACT:** No additional funding is required.

**FUNDING:** Included in FY2012/13 EUD Budget Account Number 160603.

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Jordan Ayers  
Deputy City Manager/Internal Services Director

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Elizabeth A. Kirkley  
Electric Utility Director

EAK/lst

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

## **AGREEMENT FOR CONSULTING SERVICES**

This Agreement is made and entered into as of June 6, 2012, by and between the City of Lodi, a municipal corporation (hereinafter "City") and Matt Foskett Consulting LLC (hereinafter "Consultant"), (collectively "Parties") both of whom agree as follows:

### **RECITALS:**

It is the desire of the City to retain the services of Consultant for a period of one (1) year, commencing on July 1, 2012 through June 30, 2013, to provide rates and resources services, as more fully described below, to the Director of the City's Electric Utility Department.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

### **1. SCOPE OF SERVICES:**

City hereby agrees to contract with Consultant to perform tasks for the City of Lodi at the direction of the Electric Utility Department Director associated with the planning, evaluation, acquisition and operation of bulk power supplies and delivery resources as well as the development of electric rate schedules. The scope of services to be performed by Consultant is more fully set forth in Exhibit A, attached hereto and incorporated by this reference.

### **2. TIME FOR COMMENCEMENT AND COMPLETION OF WORK:**

Consultant shall commence work pursuant to this Agreement, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the scope of services (Exhibit A).

Consultant shall submit to City such reports, diagrams, drawings and other work products as may be designated in the scope of services (Exhibit A).

Consultant shall not be responsible for delays caused by the failure of City staff to provide required data or review documents within the appropriate time frames.

### **3. COMPENSATION:**

Consultant's compensation for all work under this Agreement shall conform to the provisions of the Fee Schedule, attached hereto as Exhibit B and incorporated by this reference.

Consultant shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by City.

#### **3.1. METHOD OF PAYMENT:**

Consultant shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours,

individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. Consultant's compensation for all work under this Agreement shall not exceed the amount of the Fee Schedule (Exhibit B).

### **3.2. COSTS:**

The Fee Schedule (Exhibit B) shall include all reimbursable costs required for the performance of the scope of services (Exhibit A). Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by City.

### **3.3. AUDITING:**

City reserves the right to periodically audit all charges made by Consultant to City for services under this Agreement. Upon request, Consultant agrees to furnish City, or a designated representative, with necessary information and assistance needed to conduct such an audit.

Consultant agrees that City or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. Consultant agrees to provide City or its delegate with any relevant information requested and shall permit City or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. Consultant further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

## **4. BENEFITS:**

As an independent contractor, Consultant shall not be entitled to any benefits from City, including but not limited to PERS retirement, sick leave, vacation, administrative leave, health insurance, deferred compensation, or life insurance.

## **5. CONSULTANT IS NOT AN EMPLOYEE OF CITY:**

Consultant agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of City and not an employee of City. City shall not direct the work and means for accomplishment of the services and work to be performed hereunder. City, however, retains the right to require that work performed by Consultant meet specific standards without regard to the manner and means of accomplishment thereof.

## **6. INSURANCE REQUIREMENTS FOR CONSULTANT:**

Consultant shall take out and maintain during the term of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

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///

///

## **7. TERMINATION:**

(a) Termination by Consultant - In the event Consultant terminates this Agreement, he shall give City at least twenty-one (21) days advance written notice and shall be entitled to all earned compensation.

(b) Termination by City - The City Manager may terminate this Agreement at any time, with or without cause. Twenty-four (24) hours Notice of Termination shall be provided to Consultant in writing.

Upon termination, Consultant shall immediately suspend all work on behalf of City and deliver any documents or work in progress to City. However, City shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by Consultant with third parties in reliance upon this Agreement.

## **8. CONFIDENTIALITY:**

Consultant agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by City. City agrees to maintain confidentiality of any documents owned by Consultant and clearly marked by Consultant as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by Consultant. Consultant acknowledges that City is subject to the California Public Records Act.

## **9. CITY BUSINESS LICENSE REQUIREMENT:**

Consultant acknowledges that Lodi Municipal Code Section 3.01.020 requires Consultant to have a city business license and Consultant agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

## **10. NOTICES:**

All notices required by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, as follows:

To City:

Konradt Bartlam, City Manager  
City of Lodi  
221 West Pine Street  
Lodi, CA 95240

To Consultant:

Matt Foskett Consulting LLC  
Attn: Matt Foskett  
2464 Portola Way  
Sacramento, CA 95818

## **11. MODIFICATIONS:**

No modification of this Agreement shall be valid unless said modification is in writing and signed by both parties.

## **12. APPLICABLE LAW, JURISDICTION, SEVERABILITY, AND ATTORNEY'S FEES:**

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

## **13. CAPTIONS:**

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

## **14. INTEGRATION AND MODIFICATION:**

This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

## **15. CONFLICT OF INTEREST:**

Consultant shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to his City consultancy. Consultant is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements (FPPC Form 700) at the time of appointment, annually thereafter, and at the time of termination of this Contract.

## **16. CITY ADMINISTRATIVE POLICIES AND PROCEDURES:**

Because Consultant will at times be interacting with City employees and third parties in the course of providing services under this Agreement, Consultant agrees to review and comply with City's Drug-free Workplace Policy, Discrimination Policy and City's Discrimination Complaint Procedures, as set forth in the City of Lodi Administrative Policy and Procedure Manual.

## **17. INDEMNIFICATION AND RESPONSIBILITY FOR DAMAGE:**

Consultant to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of Consultant, any subcontractor employed directly by Consultant, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

**18. NO PERSONAL LIABILITY:**

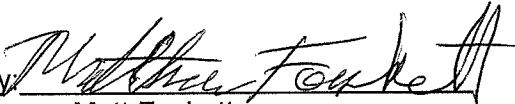
Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

IN WITNESS WHEREOF, the City Manager of the City of Lodi has signed this Agreement and Consultant has signed and executed this Agreement as of the day and year first above written.

CITY OF LODI, a municipal corporation

CONSULTANT  
MATT FOSKETT CONSULTING LLC

By: \_\_\_\_\_  
Konradt Bartlam,  
City Manager

By:   
Matt Fokett


Taxpayer ID No. 45-5196669

Attest:

\_\_\_\_\_  
Randi Johl  
City Clerk

Approved as to Form:

D. Stephen Schwabauer  
City Attorney

By: \_\_\_\_\_  
Janice D. Magdich  
Deputy City Attorney 

Attachments:

- Exhibit A: Scope of Services
- Exhibit B: Fee Schedule
- Exhibit C: Insurance Requirements

**Funding Source: 160603.7323**  
**(Business Unit & Account No.)**

# Exhibit A

Matt Foskett Consulting LLC will provide assistance to the Client in the areas of rates, cost of service, power supply and transmission costs. This work may include but is not limited to the following:

- Cost of service
- Rate Design and evaluation
- Power cost adjustment rate
- NCPA resource and bill review
- Resource evaluation
- Load Forecasting
- CAISO and other transmission issue review
- Compliance with State Green House Gas Program
- Compliance with State Renewable Portfolio Standard
- Compliance with CAISO Resource Adequacy requirement
- Fuel Procurement



# **Exhibit B**

## **Matt Foscett Consulting LLC**

### **FEE SCHEDULE CALENDER YEARS 2012 & 2013**

#### **HOURLY BILLING RATES:**

- Principle Consultant \$85.00/hour

#### **EXPENSES:**

- Auto Mileage \$0.555/mile  
IRS standard mileage rate

For vehicle travel outside San Joaquin, Sacramento and southern Placer Counties; no mileage charges will be incurred for trips inside San Joaquin, Sacramento or southern Placer Counties.

- Air Travel At Cost
- Meals and Incidental Expenses (In San Joaquin, Sacramento and southern Placer Counties none, elsewhere at cost)
- Lodging (In San Joaquin, Sacramento and southern Placer Counties none, elsewhere at cost)
- Sub-consulting and Sub-contracting At Cost plus 10%
- Other Reimbursable Expenses At Cost

#### **NOTES:**

For vehicle travel outside San Joaquin, Sacramento or southern Placer Counties one half the employees' hourly rate will be charged from home portal to destination portal using Google Maps travel time estimates.

Invoices will be sent at the beginning of the calendar month for services provided and expenses incurred the previous calendar month. Payment is expected within 30 days unless otherwise provided for in the contract.



## Exhibit C

**5-413 Insurance Requirements for Contractor** The Contractor shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Contractor and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Contractor's operations under this contract, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

- |  |   |
|--|---|
| <p>1. <u>COMPREHENSIVE GENERAL LIABILITY</u></p> <p>\$1,000,000 Ea. Occurrence</p><br><p>\$2,000,000 Aggregate</p> | <p>2. <u>COMPREHENSIVE AUTOMOBILE LIABILITY</u></p> <p>\$1,000,000 Bodily Injury - Ea. Person</p> <p>\$1,000,000 Bodily Injury - Ea. Occurrence</p> <p>\$1,000,000 Property Damage - Ea. Occurrence</p> |
| <p>3. <u>ERRORS AND OMISSIONS LIABILITY</u></p> <p>\$1,000,000 Ea. Occurrence</p>                                  |   |

NOTE: Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

- (a) Additional Named Insured Endorsement  
Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers as additional named insureds.  
  
(This endorsement shall be on a form furnished to the City and shall be included with Contractor's policies.)
- (b) Primary Insurance Endorsement  
Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.
- (c) Severability of Interest Clause  
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.
- (d) Notice of Cancellation or Change in Coverage Endorsement  
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

**5-414 Compensation Insurance** The Contractor shall take out and maintain during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

RESOLUTION NO. 2012-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING  
THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR  
CONSULTING SERVICES WITH MATT FOSKETT  
CONSULTING, LLC FOR ELECTRIC UTILITY RATES AND  
RESOURCES SERVICES (\$120,000)

=====

WHEREAS, the Electric Utility Department requires consulting services for planning, evaluation, acquisition and operation of bulk power supplies and delivery resources as well as the development of electric utility rates; and

WHEREAS, the attached agreement for consulting services with Matt Foskett Consulting, LLC will provide these services as outlined in the scope of work shown on Exhibit A; and

WHEREAS, Mr. Foskett has over 30 years of experience in the electric utility industry; and

WHEREAS, funds are available in the FY 2012/13 EUD Budget Account Number 160603.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby authorizes the City Manager to execute an Agreement for Consulting Services with Matt Foskett, LLC for electric utility rates and resources services with administration by the Electric Utility Director in an amount not to exceed \$120,000.

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS -

NOES: COUNCIL MEMBERS -

ABSENT: COUNCIL MEMBERS -

ABSTAIN: COUNCIL MEMBERS -

RANDI JOHL  
City Clerk

2012-\_\_\_\_\_



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## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt Resolution Approving the First Amendment to the Lodi Energy Center Project Management and Operations Agreement and Authorizing Execution by the City Manager

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Electric Utility Director

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**RECOMMENDED ACTION:** Adopt a resolution approving the First Amendment to the Lodi Energy Center Project Management and Operations Agreement and authorizing execution by the City Manager.

**BACKGROUND INFORMATION:** The City of Lodi and other participants entered into the Lodi Energy Center Project Management and Operations Agreement (PMOA) dated effective August 1, 2010, for the purpose of governing all matters related to the operations and management of the Lodi Energy Center (LEC).

Since that time Assembly Bill 32 has been passed by the California State Legislature and signed by the Governor and adopted by the California Air Resources Board (CARB) on October 20, 2011, became final in December 2011, and will impose limits upon Green House Gas emissions commencing January 1, 2013.

This First Amendment to the PMOA clarifies NCPA's authority to obtain all necessary federal, state and local permits, licenses, opinions and rulings to construct, operate, and maintain the LEC Project in accordance with all legal and regulatory requirements and prudent utility practice which includes, but is not limited to, participation in CARB's Cap-and-Trade Program and the ability to transfer Compliance Instruments between NCPA and LEC Participants.

The language of the proposed new Section 3.3c to be included in the First Amendment to the PMOA was reviewed and approved by the LEC Project Participants Committee on March 12, 2012 and by the NCPA Commission on March 22, 2012; the related NCPA Staff Report is attached. Please note that the Agreement Schedule 11.00, marked draft, attached to the NCPA Staff Report is only for reference and is not part of the First Amendment. The LEC Project Participants Committee will be finalizing a new Schedule 11.00 to be approved by the NCPA Commission. Revisions to schedules in the PMOA only require NCPA Commission approval.

---

APPROVED: \_\_\_\_\_  
Konradt Bartlam, City Manager

**FISCAL IMPACT:** No significant financial impact is expected from the approval of the First Amendment to the Lodi Energy Center Project Management and Operations Agreement.

**FUNDING AVAILABLE:** Included in the FY 2012/13 Budget Account No. 160642.8201.

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Jordan Ayers  
Deputy City Manager/Internal Services Director

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Elizabeth A. Kirkley  
Electric Utility Director

PREPARED BY: Matt Foskett, Rates and Resources Manager

EAK/MF/lst



## **FIRST AMENDMENT TO THE LODI ENERGY CENTER PROJECT MANAGEMENT AND OPERATIONS AGREEMENT**

This First Amendment (“Amendment”) to the Lodi Energy Center Project Management and Operations Agreement is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2012 (“Effective Date”), by and between the Northern California Power Agency (“NCPA”), a joint powers agency organized under the laws of the State of California, and each of the undersigned Participants in the Lodi Energy Center Project (“Participants”) (collectively, the “Parties”).

WHEREAS, the Parties entered into the Lodi Energy Center Project Management and Operations Agreement dated effective August 1, 2010, (the “Agreement”) for the purpose of governing all matters related to the operations and management of the Lodi Energy Center, and

WHEREAS, the Agreement sets forth NCPA duties, obligations and authority in connection with the management and operation of the Lodi Energy Center; and

WHEREAS, the Parties now desire to amend the Agreement to clarify that NCPA’s authority to obtain all necessary Federal, state and local permits, licenses, opinions and rulings to construct, operate, and maintain the Project in accordance with all legal and regulatory requirements and Prudent Utility Practice includes, but is not limited to, participation in the California Air Resources Board’s Cap-and-Trade Program and the ability to transfer Compliance Instruments between NCPA and Participants as set forth below.

WHEREAS, the Lodi Energy Center Project Participant Committee voted to approve this Amendment to the Agreement on March 12, 2012; and

WHEREAS, the Parties have agreed to modify Article 3, Section 3.3, (NCPA’s Obligations, Duties and Authority) to add a new Section 3.3c, and

WHEREAS, in accordance with Article 22, Section 22.1 all changes to the Agreement must be in writing and signed by all the Parties;

NOW, THEREFORE, the Parties agree as follows:

- 1. Article 3, Section 3.3 (NCPA’s Obligations, Duties and Authority) of the Agreement shall be amended to add a new Section 3.3c, which shall read in full as follows:**

- c.
  1. NCPA Obligation

emissions compliance obligations when required by law. A Compliance Instrument means an allowance, ARB offset credit, or sector-based offset credit as provided under the Cap-and-Trade Program defined below in section 3.3c.2.

2. Purpose; Future Program; Definitions

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contravention of any regulations, procedures, protocols or rules applicable to such Participant. NCPA will treat any such Participant directions to purchase Compliance Instruments as confidential to the extent allowed by law. No additional costs or penalties shall be incurred by other Participants or NCPA by reason of any such transfer, placement, or direction; and any identifiable additional costs, charges, fees, penalties, liabilities and damages incurred by the Project or NCPA resulting from such activities will be fully charged to, and paid by, the Participant taking such action(s).

Under no circumstances shall any Participant be liable under the PSA, the PMOA or PMOA schedules for any costs, charges, fees, penalties, liabilities, and damages arising out of activities related to Cap-and-Trade compliance for any emission sources other than the Project, including, but not limited to, penalties for failure to comply with reporting, surrender, or other legal obligations.

(4) Project's Cap-and Trade Account

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2. This Amendment in no way alters the terms and conditions of the Agreement except as specifically set forth herein.

The Parties have executed this Amendment as of the Effective Date.

**NORTHERN CALIFORNIA POWER AGENCY**

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

By: \_\_\_\_\_

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\_\_\_\_\_

**CITY OF GRIDLEY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF HEALDSBURG**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF LODI**

By: \_\_\_\_\_

Title: City Manager

KONRADT BARTLAM

Date: \_\_\_\_\_

Approved as to form:

Attest:

By: \_\_\_\_\_

By: \_\_\_\_\_

D. STEPHEN SCHWABAUER, City Attorney  
JANICE D. MAGDICH, Deputy City Attorney

RANDI JOHL  
City Clerk



**CITY OF LOMPOC**

By: \_\_\_\_\_

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# Commission Staff Report

AGENDA ITEM NO.: 23

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**Date:** March 22, 2012  
**To:** NCPA Commission  
**Subject:** First Amendment to the Project Management and Operations Agreement for the Lodi Energy Center

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## Proposal

Approve a First Amendment to the Lodi Energy Center (LEC) Project Management and Operations Agreement. The amendment adds a new Section 3.3c and will incorporate a new Agreement Schedule 11.00 (a draft of Schedule 11 is included for reference) necessary for compliance with AB32 requirements. After approval by NCPA, PMOA Amendment 1 will need to be approved by each of the LEC Project Participant's governing bodies.

## Background

On April 22, 2010, the NCPA Commission adopted Resolution 10-20 authorizing the NCPA General Manager to execute the LEC Project Management and Operations Agreement (PMOA) for the management and operation of the LEC Combined Cycle 280 MW power plant. The PMOA was executed on August 1, 2010.

During the development of the regulations associated with the implementation of AB32, NCPA successfully argued to allow members to transfer freely allocated allowances to NCPA to meet NCPA's compliance obligations associated with AB32. This option avoids transaction costs and risks associated with members having to sell the allowances in an auction and NCPA having to procure allowances from the same auction. This PMOA amendment is necessary to allow this type of transaction between the Project Participants and NCPA.

The language of the proposed new Section 3.3c to be included in the First Amendment to the PMOA was reviewed and approved by the LEC Project Participants Committee on March 12, 2012.

In addition to this amendment, staff is working with the Project Participants Committee to finalize a detailed Schedule to obtain the necessary AB32 Compliance Instruments. This schedule is expected to be completed in April and be submitted to the Commission for approval at its April or May meeting.

## Fiscal Impact

Annual LEC AB32 greenhouse gas (GHG) compliance costs will vary directly with the price of needed Compliance Instruments and the level of LEC operation. For 2013, the proposed LEC budget contains approximately \$7,000,000 for the AB32 obligations associated with the operation of LEC from January to June 2013 (the first period the LEC will be required to comply with AB32 requirements). The Project Participants may satisfy their Generation Entitlement Share (GES) obligations by providing cash or the transfer of freely allocated allowances to NCPA necessary to comply with AB32 requirements.

#### Environmental Analysis

This First Amendment to the PMOA does not constitute a project as defined in the California Environmental Quality Act (CEQA); therefore no environmental approvals under CEQA are required.


#### Recommendation

Staff recommends that the NCPA Commission approve Resolution 12-23 authorizing the General Manager or his designee to enter into a First Amendment to the Project Management and Operations Agreement, with any non-substantial changes recommended and approved by the General Counsel.

Respectfully submitted,

  
JAMES H. POPE  
General Manager

Prepared by:

  
KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (2)

- Resolution
- First Amendment to Project Management and Operations Agreement for LEC

## RESOLUTION 12-23

### RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY APPROVING A FIRST AMENDMENT TO THE PROJECT MANAGEMENT AND OPERATIONS AGREEMENT FOR LODI ENERGY CENTER (reference Staff Report #129:12)

WHEREAS, on April 22, 2010 the Northern California Power Agency Commission adopted Resolution 10-20 authorizing the NCPA General Manager to execute the Lodi Energy Center (LEC) Project Management and Operations Agreement (PMOA); and

WHEREAS, subsequent legislation and regulatory requirements have been imposed which require that an amendment to the PMOA is necessary to address applicable obligations imposed on NCPA in its role as LEC owner/operator and to manage the Project's AB 32 related regulatory requirements and carbon allowance transfers; and

WHEREAS, on March 12, 2012 the LEC Project Participation Committee approved the language of the proposed new Section 3.3c to be included in the First Amendment to the PMOA; and

WHEREAS, the First Amendment to the PMOA indicates the LEC Project Participants shall be responsible for their respective Generation Entitlement Share (GES) of all costs incurred by NCPA in meeting Project AB 32 Compliance Obligations; and

WHEREAS, the First Amendment to the PMOA does not constitute a project as defined in the California Environmental Quality Act (CEQA); therefore no environmental approvals under CEQA are required;

NOW, THEREFORE, BE IT RESOLVED, that the Commission of the Northern California Power Agency authorize its General Manager or his designee to enter into a First Amendment to the Project Management and Operations Agreement for the Lodi Energy Center which adds a new Section 3.3c and will incorporate a new Agreement Schedule 11.00 necessary for compliance with AB32 requirements, with any non-substantial changes recommended and approved by the General Counsel.

PASSED, ADOPTED and APPROVED this 22nd day of March 2012, by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

\_\_\_\_\_  
GARY W. PLASS  
CHAIRMAN

ATTEST:

\_\_\_\_\_  
DENISE DOW  
ASSISTANT SECRETARY



**PMOA** new Section 3.3c as follows:

c. 1. NCPA Obligation For the sake of clarity, and as provided in Section 27.2 of the PSA and in Sections 3.3b.2 and 3.3b.5 above, the authority and obligation of NCPA and the NCPA General Manager to obtain Federal, state and local permits, licenses, opinions and rulings as necessary to construct, operate, and maintain the Project in accordance with all legal and regulatory requirements and Prudent Utility Practice includes, but is not limited to, the acquisition and surrender of any necessary Compliance Instruments to meet environmental emissions compliance obligations when required by law. A Compliance Instrument means an allowance, ARB offset credit, or sector-based offset credit as provided under the Cap-and-Trade Program defined below in section 3.3c.2.

2. Purpose; Future Program; Definitions This Section 3.3c and Agreement Schedule 11.00 are intended to address applicable obligations imposed on Covered Entities, including NCPA in its role as LEC owner/operator, by the California Global Warming Solutions Act (AB 32) and Title 17 California Code of Regulations, Article 5, Section 95800 *et seq.* (Cap-and-Trade Program or Cap-and-Trade). If any other applicable program, regulation, or law imposes requirements on NCPA, in its role as LEC owner/operator, relating to greenhouse gas emissions or similar types of environmental mandates, NCPA will consult with the PPC and will manage and comply with such requirements in a manner as similar as feasible to the process described in this Section 3.3c, including through the development of an appropriate Agreement Schedule addition to this Agreement, if necessary. Provided, however, that under all circumstances each Participant shall be responsible for its GES of all costs of such compliance. All definitions in this Section 3.3c and Agreement Schedule 11.00, not otherwise defined in the PSA or this Agreement, are as stated in the Cap-and-Trade Program.

3. Participants' Obligations; Alternatives Each Participant shall be responsible for its GES of all costs incurred by NCPA attributable to the Project in complying with Cap-and-Trade, including costs incurred in obtaining Compliance Instruments that the NCPA General Manager may acquire or purchase as provided in Agreement Schedule 11.00, as may be amended from time to time. In lieu of paying for any portion of its GES of the cost of obtaining necessary Compliance Instruments, to the extent permitted by law and administratively feasible, Participants may transfer and NCPA may accept Compliance Instruments, and/or Participants may request placement of Compliance Instruments that are directly allocated to such Participant(s) into NCPA's LEC Compliance Account as provided in Agreement Schedule 11.00, as may be amended from time to time. To the extent any directly allocated Compliance Instruments are statutorily or otherwise prohibited from being used to meet the Project's Compliance Obligations, NCPA has no obligation to accept any such placement of directly allocated Compliance Instruments into NCPA's LEC Compliance Account from any Participant. In addition, Participants may provide direction to NCPA, in accordance with procedures described in Agreement Schedule 11.00, as may be amended from time to time, for the purchase of Compliance Instruments to meet all or a portion of a Participant's GES of the Project's Compliance Obligation, in which case NCPA shall participate in Auctions and Allowance Price Containment Reserve Sales in accordance with such Participant's directions. Each Participant providing direction to NCPA to purchase Compliance Instruments warrants the authority of the person executing such direction on such Participant's behalf,

and NCPA shall be entitled to fully rely upon the authority of such person irrespective of whether such direction may be in contravention of any regulations, procedures, protocols or rules applicable to such Participant. NCPA will treat any such Participant directions to purchase Compliance Instruments as confidential to the extent allowed by law. No additional costs or penalties shall be incurred by other Participants or NCPA by reason of any such transfer, placement, or direction; and any identifiable additional costs, charges, fees, penalties, liabilities and damages incurred by the Project or NCPA resulting from such activities will be fully charged to, and paid by, the Participant taking such action(s).

Under no circumstances shall any Participant be liable under the PSA, the PMOA or PMOA schedules for any costs, charges, fees, penalties, liabilities, and damages arising out of activities related to Cap-and-Trade compliance for any emission sources other than the Project, including, but not limited to, penalties for failure to comply with reporting, surrender, or other legal obligations.

(4) Project's Cap-and Trade Account NCPA shall establish, as appropriate, internal accounting for LEC separate from those of NCPA's other projects. LEC Project accounting shall include: a) Compliance Instruments and Compliance Obligations to reflect the Project's share of NCPA's total Compliance Obligation; b) any Compliance Instruments provided to NCPA by Participants for the Project; and c) any Compliance Instruments purchased by NCPA for the Project pursuant to Participants' directions. NCPA shall establish procedures in Agreement Schedule 11.00, as may be amended from time to time, for accurate and timely accounting of the Project's share of NCPA's total Compliance Obligations and Compliance Instruments.

(5) Participants' Cap-and-Trade Accounts NCPA shall establish, as appropriate, individual Participant accounts which shall include: a) Compliance Instruments and Compliance Obligations to reflect each Participant's GES of the Project's Compliance Obligation; b) any Compliance Instruments provided to NCPA by each Participant; and c) any Compliance Instruments purchased by NCPA pursuant to each Participant's directions. NCPA shall establish procedures in Agreement Schedule 11.00, as may be amended from time to time, for accurate and timely accounting of such Project related Compliance Obligations and Compliance Instruments. Such accounting shall also include and allocate to the responsible Participant(s) any identifiable costs, charges, fees, penalties, liabilities, and damages arising out of a Participant's activities related to Cap-and-Trade compliance for the Project, including, but not limited to, penalties for failure to comply with reporting, surrender, or other legal obligations, resulting from a Participant's decisions or actions to transfer Compliance Instruments or request placement of Compliance Instruments into NCPA's LEC Compliance Account, or provide directions to NCPA. Under no circumstances shall NCPA or any other Participant be liable for such costs attributable to the responsible Participant.

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## Agreement Schedule 11.00

### Management of Cap-and-Trade Program Compliance

(Draft to be finalized by the PPC prior to Commercial Operation Date)

The Cap-and-Trade Program imposes obligations on NCPA to report GHG emissions caused by operation of the Project and to surrender to the California Air Resources Board Compliance Instruments for such emissions to comply with the Cap-and-Trade Program which enforces the requirements of Subchapter 10 Climate Change, Article 5, Sections 95800 to 96023, Title 17, California Code of Regulations (all to be referred to as "AB32").

The procedures below outline NCPA, PPC, and Participant responsibilities with regard to procurement, payment, purchase, sale, trade, identification, certification, and all similar activities ancillary to acquiring, evaluating, and allocating requisite AB32 Offsets, Allowances, penalties, certificates or other Compliance Instruments, products, factors or considerations required and associated with the operation of the Project. Such activities include, but are not limited to, transactions between NCPA and third parties, transactions utilizing agents and/or third parties to act as intermediaries, and transactions between and among Project Participants and NCPA if requested and feasible, all as may be developed, revised, and approved by the PPC ("AB32 Compliance Activities"). Because the Cap-and-Trade Program is in its initial stages, these principles are intended to be used as general guidance and may be revised and/or developed in further detail from time to time to respond to changes in law, regulations, and market conditions.

General principles include:

1. All Participants are to be treated in an equitable manner.
2. All Participants shall be afforded the same opportunities to interact with NCPA and/or any outside agents utilized by NCPA as approved and authorized by the PPC. NCPA's AB32 Compliance Activities undertaken for the Project shall be subject to full transparency for all Project Participants except that NCPA shall treat Participant issued directions to NCPA related to any Allowance Auction and Allowance Price Containment Reserve Sales (Reserve Sales) bidding as confidential to the extent allowed by law.
3. To the extent practicable, NCPA shall allow Participants to individually manage their own risks of meeting their GES of the Project's Compliance Obligations.
4. NCPA shall procure any required and as yet unattained Compliance Instruments associated with LEC operations as close

in time as practicable to daily LEC plant operations, unless otherwise directed by the PPC, and pursuant to the protocols contained in this Agreement Schedule 11.00.

5. Participants desiring to obtain Compliance Instruments in advance of Project operations or in arrears, if such Compliance Instruments have not yet been procured by NCPA, may provide to NCPA a bid and purchase schedule, including prices and quantities, and NCPA will accordingly use best reasonable efforts to purchase Compliance Instruments needed to meet Participant's GES of the Project's Compliance Obligation in the Allowance Auctions and Allowance Price Containment Reserve Sales. In order for a Participant to request that NCPA participate in an Allowance Auction for any needed Compliance Instruments in arrears, NCPA and such Participant shall coordinate to meet any requisite depository and timeline requirements consistent with the Compliance Instrument procurement process outlined in this Agreement Schedule 11.00.
6. On a monthly basis, NCPA shall timely invoice Participants in the All Resources Bill, based on GES, for costs associated with AB32 Compliance Activities such that NCPA shall have on hand sufficient funds and/or Compliance Instruments from each Project Participant projected to meet all GES of the Project's Compliance Obligations.
7. NCPA intends, to the extent practicable, to allow Participants to perform all AB32 Compliance Activities and meet their GES of the Project's Compliance Obligations (current, future and, when required, in arrears) by conveyance of any combination of cash and or Compliance Instruments to NCPA sufficient to meet such obligations.
8. NCPA shall set up any needed accounts or accounting mechanisms such that Participants may advance to NCPA, and NCPA shall track by Participant, the combination of available cash and/or Compliance Instruments prior to actual Project operations that may be utilized to meet all or a portion of a given Participant's GES of the Project Compliance Obligation.
9. NCPA shall set up and establish any requisite reserve accounts, emissions products trading accounts and deposits, brokerage accounts and deposits, and/or other similar accounts, deposits, or reserve requirements in consultation with the PPC.
10. NCPA shall account for Compliance Obligations for the Project separately by Participant, and to the extent identifiable, account for and allocate to each individual Participant any costs, charges, fees, penalties, liabilities, and damages arising out of that Participant's AB32 Compliance Activities for the Project including, but not limited to, penalties for failure to comply with reporting, surrender, or other legal obligations resulting from a Participant's decisions and/or actions to transfer Compliance Instruments, to request placement

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of Compliance Instruments into NCPA's Compliance Account, to provide direction to NCPA to purchase Compliance Instruments, and/or to pay cash. Under no circumstances shall NCPA or any other Participant be liable for such costs attributable to the responsible Participant

Definitions:

"AB32" or "Cap and Trade Regulations" or "Cap-and-Trade" means the California economy-wide Cap and Trade program for reducing greenhouse gas (GHG) emissions, and which is a core mechanism of the Global Warming Solutions Act of 2006 which requires California to reduce its climate change causing emissions back to 1990 levels by 2020, and which CARB unanimously adopted on October 20, 2011.

"Allowance" means a limited tradable authorization to emit up to one metric ton of Carbon Dioxide Equivalent, or other such unit as may be established from time to time by an authorized regulatory body or governmental agency.

"Auction" means the process of buying and or selling California Greenhouse Gas Allowances and or other environmental emission related products, by offering such products for bid, selling such products by bid, buying such products by bid, upon which, given a successful purchase or sale bid, the title of such products transfers from the respective seller(s) to buyer(s).

"Cap and Trade" means a system which seeks to constrain the aggregate emissions of regulated sources by creating a limited number of tradable emission allowances, which emission sources must secure and surrender in number equal to their emissions. In an emissions trading or cap-and-trade scheme, a limit on access to a resource (the cap) is defined and then allocated among users in the form of permits or allowances. Compliance is established by comparing actual emissions with permits surrendered including any permits traded within the cap. Under a tradable permit system, an allowable overall level of pollution is established and allocated among firms in the form of permits. Firms that keep their emission levels below their allotted level may sell their surplus permits to other firms or use them to offset excess emissions in other parts of their facilities.

"CARB" means the California Air Resources Board.

"California Greenhouse Gas Emissions Allowance" or "CAGHG Allowance" means an allowance, offset, certificate, or other similar document issued by CARB and equal to one metric ton of CO2 equivalent.

"Carbon Dioxide" or "CO<sub>2</sub>" means the most common of the generally defined greenhouse gases consisting on a molecular level of one carbon atom and two oxygen atoms.

"Carbon Dioxide Equivalent" or "CO<sub>2</sub> Equivalent" or "CO<sub>2</sub>e" means a measure for comparing CO<sub>2</sub> with other greenhouse gases based on the quantity of such gases, when multiplied by the applicable global warming potential (GWP) factor, equate to the equivalent metric tons of carbon dioxide (MTCO<sub>2</sub>e).

"Compliance Instrument" means an Allowance, ARB Offset Credit, and or sector-based offset credit that may be used for to satisfy Compliance Obligations as provided under the Cap-and-Trade Program.

"Compliance Obligation" means obligation to satisfy a Covered Entity's regulatory responsibility under the Cap-and-Trade program.

"Covered Entity" means a major GHG emitting sources, such as electricity generation, including imports, and large stationary sources (i.e. refineries, cement production facilities, oil and gas production facilities, glass manufacturing facilities, food processing plants) that emit more than 25,000 MTCO<sub>2</sub>e per year, as well as natural gas and propane fuel providers and transportation fuel providers, as such definition may be revised from time to time pursuant to Cape and Trade regulations.

"Greenhouse Gas," "Greenhouse Gases," or "GHG" means CO<sub>2</sub>, Methane (CH<sub>4</sub>), Sulfur Hydro fluorocarbons HFCs), Per fluorocarbons (PFCs), and / or other gases which may be identified or classified as Greenhouse Gases from time to time by official Federal, State or local regulatory or environment bodies.

"Metric Ton" or "MT" means a common international measurement for mass, equivalent to 2, 204.6 pounds.

"Offset Credit" or "Offset" means a tradable compliance instrument issued or approved by CARB or other regulatory agency that satisfies a GHG reduction or GHG removal enhancement of one MT of CO<sub>2</sub>e as required by law or regulation.

"Surrender Obligation" means the statutorily required quantity and timing of the transfer of appropriate Compliance Instruments to CARB to satisfy a Covered Entity's mandated Cap and Trade responsibilities during a particular compliance time period.

The above definitions are intended to reflect definitions included in the Cap-and-Trade Program but also may affect calculations made pursuant this Agreement Schedule 11.00. If future Cap-and-Trade Program actions revise or change any applicable definitions in this Schedule 11.00 in a manner that would affect Project and or Participant Compliance Obligations or associated calculations, the PPC

and NCPA staff will timely discuss such definition changes and make any requisite changes to this Agreement Schedule 11.00.

## **General Implementation Protocols**

### **I. Forecast of Required Compliance Obligations**

- A. NCPA will annually prepare and submit to the PPC a forecast of GHG emissions for LEC covering the subsequent 10 year operating period.
- B. Compliance Obligations will be tabulated such that each Participant will be provided a forecast of its GES of the Project's Compliance Obligations by month and year, for each year of the 10 year forecast period.
- C. The 10 year forecast will be updated annually and provided to the PPC by December 31<sup>st</sup> of each year for the next subsequent ten compliance years. (e.g. December 31, 2012 for compliance years 2013 through 2022)
- D. The 10 year forecast will be based on production cost model simulation utilizing NCPA's Plexos software, or successor software package or methodology should NCPA elect to utilize an alternate software package or implement other manner of producing a 10 year forecast.
- E. Production cost model assumptions and output will be reviewed with the PPC in accordance with the review schedule established for NCPA's annual budget process. (For example, the forecast prepared for compliance years 2013 through 2022 would typically be reviewed with the PPC as part of the annual budget review process during the January/February 2012 time frame).
- F. As warranted and in NCPA's sole discretion, NCPA will make adjustments to the 10 year forecast and provide the updated forecast to the PPC.

### **II. NCPA Compliance Instrument Invoicing, Tracking and Settlement**

- A. NCPA will invoice Project Participants monthly for their GES of the estimated cost of Allowances forecast to be needed for the next operating month, in accordance with the 10 year forecast or, if available, more current forecast of Project operating levels, as part of NCPA's All Resources Bill to Participants.
- B. Project Participants may satisfy their individual GES of the Project's Compliance Obligations by providing to NCPA, or having available in an appropriate NCPA Project account, cash, Compliance Instruments, or a

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combination thereof, which in aggregate, the amount or NCPA's current estimated value of which is equal to or greater than NCPA's current estimated cost to meet the Participant's net Compliance Obligation as determined in section II.C.3 where it is referred to as the "net monthly CCA balance."

C. Invoices will specify the required Compliance Obligations forecast for each operating month in thousands of metric tons of carbon dioxide equivalent and, by extension, the estimated cost to procure the forecast number of Allowances.

1. Each Participant's GES of monthly Compliance Obligation will be reviewed and adjusted to account for:
  - a. True ups for prior months' Compliance Obligation occurring as a result of:
    - i. Variations in actual generation levels from forecast generation levels.
    - ii. Variations in the forecast cost of Allowance procurement based on changes in the forward price of Allowances as determined pursuant to section II.E below.
    - iii. Compliance Instrument transfers from Participants to the NCPA Project Compliance Account occurring since the previous All Resources Bill invoice.
    - iv. Other AB32 Compliance Activities undertaken by either a Participant or NCPA that result in a net increase or decrease in each Participant's GES of the Project's monthly Compliance Obligation (for example, certified biogas deliveries may decrease a Participant's monthly GES of Project's Compliance Obligation).
2. NCPA will maintain at least two AB32 Compliance Obligation related accounts for each Project Participant:
  - a. MT Compliance Obligation and Instrument Account (MTA).
  - b. Compliance Cash Account (CCA).
3. The monthly MTA at the time of the All Resources Bill, will include the following:
  - a. The prior month's MTA.
  - b. The expected GES of the Project's monthly Compliance Obligation based on a forecast of the next month's operating levels (as adjusted for any applicable biogas or other fuel deliveries which would reduce a Participant's GES of Project monthly Compliance Obligation).
  - c. The total of the following adjustments since the previous All Resources Bill:



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- i. Compliance Instrument purchases/sales by NCPA on Participant's behalf.
    - ii. Transfers of Compliance Instruments to NCPA by Participant.
    - iii. Placement of CARB allocated Allowances into NCPA's Project Compliance Account by Participant.
    - iv. Adjustments for true-ups for prior month's actual operations.
  - d. The monthly MTA (net) will be the sum of 3(a) + 3(b) + 3(c)
- 4. The monthly CCA requirement will be calculated as the product of the applicable expected GHG Allowance costs as described in section II.E times the monthly MTA amount, as determined in section II.C.3(d). The monthly All Resources Bill will include the positive difference between the monthly CCA requirement less the prior month's CCA balance. Each month the CCA will be adjusted for the following:
  - a. Prior month's CCA balance.
  - b. Cash withdrawals.
    - i. Sections II.C.3(c) adjustments.
    - ii. Other refunds of excess funds as authorized by the PPC.
  - c. Cash injections.
    - iii. Monthly All Resources Bill payment.
    - iv. Other cash payments as required and paid by Participant
  - d. Net monthly CCA balance at the time of the monthly All Resources Bill will be calculated as: 4(a) + 4(b) + 4(c)
- D. Pursuant to AB32, Offsets are limited to not more than eight percent (8.00 %) of a Participant's GES of the Project's actual Compliance Obligations. To the extent one or more Participants provide Offsets that result in exceeding this eight percent level, such Participant(s) shall provide NCPA with a written description of how such Participant(s) would like the excess Offsets to be used, and NCPA will account for the Participant's Offsets according to that plan and invoice such Participant in accordance with that plan and section II.C.3.above.
- E. The estimated cost/value of any shortfall in each Participant's MTA balance will be calculated by multiplying each Participant's MTA shortfall amount by the higher of: 1) the Tier 1 Allowance Containment Reserve Price pursuant to section 95913 of the AB32 regulations for the next available Reserve Sale in which NCPA is eligible to participate, or 2) a) the forward price associated with a suitable publicly available index approved for such use by the PPC and NCPA Commission, or b) if no suitable publically available index is available, a price deemed appropriate

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for such use, as determined and approved by the PPC and NCPA Commission. The forward price for the index will be established as the published index price for delivery of Allowances coincident with the next available Allowance Auction in which NCPA is able to participate as determined on the date, at close of business, two weeks in advance of the issuance of the All Resources Bill invoice.]

**Comment [d1]:** The PPC and NCPA staff are discussing a possible mechanism which contemplates the utilization of Tier 1, and Tier 2 prices before Tier 3 Reserve Sale pricing is finally used to fill any physical shortfall by a specified point in time; thus this section will likely be revised to incorporate this more flexible approach.

- F. NCPA will track and account for all funds and Compliance Instruments provided to NCPA by each Participant in support of its GES of the Project's Compliance Obligations. Funds and Compliance Instruments may be combined into single categorical accounts for ease of administration, but in no circumstances will funds or Compliance Instruments provided by one Participant be allocated or utilized to meet the GES of the Project's Compliance Obligations of another Participant without advance written authorization of the affected Participants.

**III. Allowance Transfers to NCPA's Compliance Account**

- A. Pursuant to section 95892(b)(2)(A) of the AB32 regulations, some Participants who are members of NCPA and receive an allocation of Allowances may direct the CARB Executive Officer to place such Allowances in either such Participant's Publicly Owned Electric Utility Limited Use Holding Account or in the account of a Joint Powers Authority with which such Publicly Owned Electric Utility has a contract for electricity. NCPA's Compliance Account can serve as such an account for Participants who are Publicly Owned Electric Utilities and members of NCPA.
- B. Participants electing to direct the CARB Executive Officer to place a specified number of the allocated Allowances into the NCPA Compliance Account shall provide duplicate notice to NCPA by providing a copy of the Participant's directive to the CARB Executive Officer. Upon receipt of such notice, NCPA will prepare for the transfer of Allowances, which are currently scheduled to occur once per calendar year, and separately track and account for such Allowances received, in each Participant's MTA at NCPA.

**IV. Procurement of Compliance Instruments**

- A. NCPA will initially acquire Compliance Instruments from four sources: 1) Allowances transferred by Participants to NCPA in accordance with

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section 95892 of the AB32 regulations, 2) Allowances obtained through participation in CARB administered Allowance Auctions, 3) Allowances purchased through participation in the Allowance Price Containment Reserve Sales, and 4) Compliance Instruments purchased by Participants that are then transferred to NCPA.

In the event secondary markets for the sale and/or purchase of Compliance Instruments become available, Project Participants may request NCPA to modify this Agreement Schedule 11.00 to allow for NCPA's participation in such secondary markets in accordance with Article 10 of the Project Management Operating Agreement and applicable Risk Management Policies established by the NCPA Commission.

- B. In accordance with section 95832 of the AB32 regulations, the NCPA General Manager will designate a single authorized account representative and a single alternate authorized account representative to take actions in regard to NCPA's AB32 accounts and CARB administered Allowance Auctions and Allowance Price Containment Reserve Sales.
- C. NCPA will fulfill all Project mandatory reporting requirements, such as those specified in section 95850 of the AB32 regulations.
- D. Each Participant shall designate an authorized representative to provide NCPA with written directions on NCPA's participation on the Participant's behalf in Allowance Auctions, Allowance Price Containment Reserve Sales, or other Project Compliance Obligation actions NCPA may undertake on a Participant's behalf pursuant to this Agreement Schedule 11.00. Designation of a Participant's authorized representative shall be evidenced through a resolution of the governing board or designation from a Participant's executive management in a position equivalent to the General Manager, as appropriate, for each Participant. Written directions to NCPA by and through such authorized representatives shall occur through execution of a Participant Purchase Directive substantially in the form of Exhibit A to Agreement Schedule 11.00.
- E. NCPA will register with the CARB Executive Officer to be eligible to participate in all Allowance Auctions on behalf of NCPA and Participants. Allowance Auctions are currently scheduled, pursuant to section 95910 of the AB32 regulations, to take place as follows:
  - 1. In 2012, Allowance Auctions are scheduled to be held on August 15 and November 14.
  - 2. Beginning in 2013, Allowance Auctions are scheduled to be conducted on the twelfth business day of the second month of each calendar quarter.

PMOA Amendment 3.3c Draft  
3-13-2012

3. On each Allowance Auction date, two separate Allowance Auctions will occur, one for the auction of Allowances from the current and previous Budget Years, and a second one for the auction of Allowances from future Budget Years.
4. NCPA will coordinate individually with Project Participants no later than 40 days prior to scheduled Allowance Auctions to establish bid prices and quantities of Allowances that NCPA will submit on behalf of respective Project Participants. As part of its coordination, NCPA will inform each Project Participant of the quantity of funds that NCPA has available for use in the Allowance Auction on the Project Participant's behalf.
5. Project Participants shall provide a Participant Purchase Directive, signed by an authorized representative, to NCPA specifying the respective Project Participant's authorized bid prices and quantities of Allowances at least 35 days in advance of Allowance Auctions. For each Allowance Auction date, such Participant Purchase Directive may be for the Allowance Auction for the current and previous Budget Years' Allowances and/or for the future Budget Year Allowances.
  - a. Project Participants have flexibility to establish varying bid prices and may submit multiple bids with the following conditions:
    - i. For any bid quantity requested, respective Project Participants shall have sufficient funds available in an appropriate account with NCPA established for such purpose, at least 35 days in advance of the Allowance Auction, to satisfy AB32's Allowance Auction participation security requirements.
  - b. NCPA will submit bids in the Allowance Auction in accordance with respective Project Participant's written direction.
  - c. NCPA will treat Participant Purchase Directives and bid particulars as confidential to the extent allowed by law.
- F. NCPA will register with the CARB Executive Officer to be eligible to participate in Allowance Price Containment Reserve Sales. Reserve Sales are currently scheduled, pursuant to section 95913 of the AB32 regulations, to take place as follows:
  1. The first Reserve Sale is scheduled to be conducted on March 8, 2013.
  2. Subsequent Reserve Sales are scheduled to be conducted six weeks after each quarterly Allowance Auction pursuant to section 95910.

DRAFT

PMOA Amendment 3.3c Draft  
3-13-2012

3. Project Participants shall provide a Participant Purchase Directive, signed by an authorized representative, to NCPA specifying the respective Project Participant's prices and quantities of Allowances to procure at a Reserve Sale at least thirty-five (35) days in advance of the Reserve Sale. NCPA will treat Participant Purchase Directives and bid particulars as confidential to the extent allowed by law.
4. Beginning with the first Allowance Price Containment Reserve Sale after an operating period, NCPA will procure all remaining required Allowances needed for each such Participant's GES of prior actual operating emission levels that have not been otherwise provided for, at the Tier 3 Allowance Price Containment Reserve Sale price.
  - a. Project Participants will be notified of NCPA's intent to procure Allowances through an Allowance Price Containment Reserve Sale at least five weeks prior to such Reserve Sale.
  - b. Project Participants with insufficient funds on account to satisfy AB32's security requirements for participation in an Allowance Price Containment Reserve Sale will be invoiced separately for any such shortfalls, and which payment will be made by respective Project Participants to NCPA by wire transfer within five business days of the date of invoice.
  - c. Project Participants may avoid exposure to Allowance Price Containment Reserve Sale pricing by procuring sufficient Compliance Instruments through trade activities, as allowed by AB32 regulations, and assuring such Compliance Instruments obtained and are deposited into NCPA's compliance account at least 3 weeks in advance of a given Allowance Price Containment Reserve Sale.
5. Participants may direct NCPA to procure Allowances for such Participant's GES of the Project's Compliance Obligation through any Allowance Price Containment Reserve Sales that are timely available for such purpose.
  - a. Such Participants shall provide a Participant Purchase Directive, signed by an authorized representative, to NCPA specifying the respective Project Participant's authorized purchase prices and quantities of Allowances at least 35 days in advance of the scheduled Allowance Price Containment Reserve Sale. NCPA will treat Participant Purchase Directives and bid particulars as confidential to the extent allowed by law.

**Comment [d2]:** The PPC and NCPA staff are discussing a possible mechanism which contemplates the utilization of Tier 1, and Tier 2 prices before Tier 3 Reserve Sale pricing is finally used to fill any physical shortfall by a specified point in time; thus this section will likely be revised to incorporate this more flexible approach.

PMOA Amendment 3.3c Draft  
3-13-2012

- b. Project Participants have flexibility to bid multiple tier prices and quantities of Allowances for each Allowance Price Containment Reserve Sale.
  - c. For any Participant Purchase Directive submitted to NCPA, respective Project Participants shall have sufficient funds on account with NCPA, at least 35 days in advance of the scheduled Reserve Sale, to satisfy AB32's Reserve Sale participation security requirements.
  - d. NCPA will submit a bid to purchase in the scheduled Allowance Price Containment Reserve Sale in accordance with respective Project Participant's Participant Purchase Directive.
6. For all Participants who have not fulfilled their GES of the Project's Compliance Obligation by the last scheduled Reserve Sale prior to a surrender date, NCPA will bid at the Tier 3 price in this last Reserve Sale to purchase any shortage of Allowances for these Participants to meet their GES of the Project's annual or triennial Compliance Obligation that NCPA must surrender.
- a. Project Participants will be notified of NCPA's intent to procure Allowances through an Allowance Price Containment Reserve Sale at least five weeks prior to the Reserve Sale.
  - b. Project Participants with insufficient funds on account to satisfy AB32's security requirements for participation in an Allowance Price Containment Reserve Sale will be invoiced separately for any such shortfalls, and which payment will be made by respective Project Participants to NCPA by wire transfer within five business days of the date of the invoice.
  - c. Project Participants may avoid exposure to Allowance Price Containment Reserve Sale pricing by procuring sufficient Compliance Instruments through trade activities, as allowed by AB32 regulations, and assuring such Compliance Instruments obtained are deposited into NCPA's compliance account at least 3 weeks in advance of the applicable Allowance Price Containment Reserve Sale.

**V. Surrender of Compliance Instruments**

- A. NCPA will surrender Compliance Instruments in accordance with procedures specified in section 95856 of the AB32 regulations.

**DRAFT**

PMOA Amendment 3.3c Draft  
3-13-2012

NCPA will track any Participant's untimely surrender of Compliance Instruments, and any associated costs, including penalties, will be assessed to respective Project Participant(s) based on the calculated shortfall attributable to such Project Participant(s).

DRAFT

PMOA Amendment 3.3c Draft  
3-13-2012

Exhibit A  
Participant Purchase Directive  
CONFIDENTIAL

The undersigned Participant hereby directs NCPA (both also known as the "Parties") to submit a quantity(ies) and bid price(s) in the CARB quarterly Allowance Auction(s) or Allowance Price Containment Reserve Sale, as more specifically supplemented and described below:

Purchaser: Northern California Power Agency

Auction or Reserve Sale Date: [Insert date of Auction or Reserve Sale] \_\_\_\_\_

Procurement Quantity: [insert number of -Allowances in thousands of metric tons of carbon dioxide equivalent] \_\_\_\_\_

Budget Year of Allowances: [insert Budget Year of Allowances to be procured in the Allowance Auction] \_\_\_\_\_

Procurement Price: [insert price in \$/thousand metric tons of carbon dioxide equivalent] \_\_\_\_\_

Except to the extent herein provided for, no amendment or modification to the terms and conditions specified in Agreement Schedule 11.00 to the Lodi Energy Center Project Management Operating Agreement shall be enforceable unless reduced to writing and executed by both Parties. Those persons executing this Participant Purchase Directive and the Parties hereby warrant that they are authorized to do so.

Project Participant:

NCPA

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



RESOLUTION NO. 2012-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING THE FIRST AMENDMENT TO THE LODI  
ENERGY CENTER PROJECT MANAGEMENT AND  
OPERATION AGREEMENT AND AUTHORIZING  
EXECUTION BY THE CITY MANAGER

=====

WHEREAS, The City of Lodi and other participants entered into the Lodi Energy Center Project Management and Operations Agreement (PMOA) dated effective August 1, 2010, for the purpose of governing all matters related to the operations and management of the Lodi Energy Center (LEC); and

WHEREAS, since that time Assembly Bill 32 has been passed by the California State Legislature and signed by the Governor and adopted by the California Air Resources Board (CARB) on October 20, 2011, became final in December 2011, and will impose limits upon Green House Gas emissions commencing January 1, 2013; and

WHEREAS, this First Amendment to the PMOA clarifies NCPA's authority to obtain all necessary federal, state and local permits, licenses, opinions and rulings to construct, operate, and maintain the LEC Project in accordance with all legal and regulatory requirements and prudent utility practice which includes, but is not limited to, participation in CARB's Cap-and-Trade Program and the ability to transfer Compliance Instruments between NCPA and LEC Participants; and

WHEREAS, the language of the proposed new Section 3.3c to be included in the First Amendment to the PMOA was reviewed and approved by the LEC Project Participants Committee on March 12, 2012 and by the NCPA Commission on March 22, 2012; and

WHEREAS, the LEC Project Participants Committee will be finalizing a new Schedule 11.00 to be approved by the NCPA Commission; and

WHEREAS, revisions to schedules in the PMOA only require NCPA Commission approval; and

WHEREAS, no significant financial impact is expected from the approval of the First Amendment to the Lodi Energy Center Project Management and Operations Agreement and sufficient funding is included in the FY 2012/13 Budget Account No. 160642.8201.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the First Amendment to the Lodi Energy Center Project Management and Operations Agreement as shown on Exhibit A attached hereto and made a part of this Resolution, and Authorizing Execution by the City Manager with Administration by the Electric Utility Director.

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2012-\_\_\_\_\_



TM

## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Rescinding Resolution No. 2012-51 Authorizing the City Manager to Terminate the Existing Letter of Agreement with Holz Rubber Company and Execute a Revised Letter of Agreement (\$58,000)

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Electric Utility Director

---

**RECOMMENDED ACTION:** Adopt a resolution rescinding Resolution No. 2012- 51 authorizing the City Manager to terminate the existing Letter of Agreement with Holz Rubber Company and execute a revised Letter of Agreement in an amount not to exceed \$58,000.

**BACKGROUND INFORMATION:** On May 2<sup>nd</sup> the City Council adopted a resolution authorizing the City Manager to enter into a Letter of Agreement (LOA) with Holz Rubber (HR) for the sale of designated municipal electric distribution facilities in the amount of \$54,676.

Upon further inspection of the installed facilities it has been determined that a portion of the existing equipment and materials need to be replaced with new. HR has agreed to pay the additional charges for the new facilities. There will also be cost savings in replacing these facilities by decreasing the length of outage required for the work which would have had to be performed after hours on overtime. HR agrees to pay any overtime charges associated with this work.

HR has agreed to amend the existing LOA approved by the City Council on May 2, 2012. The revised LOA is in the amount not to exceed \$58,000 plus overtime labor charges, as required.

**FISCAL IMPACT:** The initial sale of facilities and services will result in revenue to the EUD in the amount of \$58,000. Net fiscal impact is insignificant.

**FUNDING:** Not applicable.

---

Elizabeth Kirkley  
Electric Utility Director

Prepared By: Rob Lechner, Manager, Customer Service & Programs

EAK/RSL/lt

---

APPROVED: \_\_\_\_\_  
Konradt Bartlam, City Manager

# LETTER OF AGREEMENT: SALE OF MUNICIPAL FACILITIES

BETWEEN

THE CITY OF LODI

AND

HOLZ RUBBER COMPANY

This Letter of Agreement (LOA) is between the City of Lodi (COL) and Holz Rubber Company (HR). By way of this signed LOA, HR agrees to purchase and maintain designated electric utility facilities as identified on the attached Appendix A.

In summary, HR will purchase one existing transformer, five new transformers and designated overhead electric distribution facilities located at the customer's plant site in the 1100 and 1200 blocks of South Sacramento Street.

In purchasing the aforementioned equipment (transformers and overhead electric distribution facilities), HR also agrees to properly maintain said equipment and pay for all repairs necessary for maintaining said equipment in the event of equipment failure in perpetuity.

The total purchase price of the equipment and associated labor costs listed on Appendix A is in the amount of \$58,000 (not to exceed figure) . *Note: in the event that the labor required to perform this project occurs after COL operating hours (7:00am to 4:30pm, Monday through Friday, excluding holidays and weekends), HR will be charged any/all additional labor costs above and beyond the costs identified on Appendix A.*

HR agrees to compensate the COL in the amount of \$10,000 prior to start of the project, and then payment of the balance in equal amounts the ensuing twenty-four (24) months until the balance is paid in full. The first monthly payment will be due two months following completion of said project.

IN WITNESS HEREOF, the parties hereto have entered into this Letter of Agreement dated June \_\_\_\_, 2012.

HOLZ RUBBER

By: 

Title: president

CITY OF LODI

By: \_\_\_\_\_  
Konradt Bartlam

Title: City Manager

ATTEST:

\_\_\_\_\_  
Randi Johl, City Clerk

APPROVED AS TO FORM:

D. STEPHEN SCHWABAUER, City Attorney  
JANICE D. MAGDICH, Deputy City Attorney

By: \_\_\_\_\_  


## APPENDIX 'A'

	Installation Cost	Depreciated Allowance	Buy Out Cost/Total
Purchase existing plant & install additional facilities	\$48,200.00	\$0	\$48,200.00
Purchase existing overhead transformer	\$ 8,333.13	\$0	\$ 8,333.13
Labor and material costs to install primary metering equipment	\$1,000.00		\$1,000.00
<b>Total</b>	<b>\$57,533.13</b>		<b>\$57,533.13</b>

Depreciation for overhead material (OHM) based on 40 years service life.

Depreciation for padmount transformer based on 30 years service life.

The scope of work includes, but is not limited to:

- 1) Underbuild a customer owned 12kV line.
- 2) Relocate 12 kV 3-phase metering facility.

RESOLUTION NO. 2012-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL RESCINDING  
RESOLUTION NO. 2012-51 AUTHORIZING THE CITY MANAGER  
TO TERMINATE THE EXISTING LETTER OF AGREEMENT  
BETWEEN THE CITY OF LODI AND HOLZ RUBBER COMPANY  
AND EXECUTE A REVISED AGREEMENT FOR THE SALE OF  
DESIGNATED MUNICIPAL ELECTRIC DISTRIBUTION FACILITIES

=====

WHEREAS, On May 2<sup>nd</sup> the City Council adopted a resolution authorizing the City Manager to enter into a Letter of Agreement (LOA) with Holz Rubber (HR) for the sale of designated municipal electric distribution facilities in the amount of \$54,676; and

WHEREAS, upon further inspection of the installed facilities it has been determined that a portion of the existing equipment and materials need to be replaced with new, and HR has agreed to pay the additional charges for the new facilities; and

WHEREAS, there will also be cost savings in replacing these facilities by decreasing the length of outage required for the work which would have had to be performed after hours on overtime, and HR had, as still does, agreed to pay any overtime charges associated with this work; and

WHEREAS, HR has agreed to amend the existing LOA approved by the City Council on May 2, 2012; and

WHEREAS, the revised LOA is in the amount not to exceed \$58,000 plus overtime labor charges, as required.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby rescinds Resolution No. 2012-51 and authorizes the City Manager to terminate the existing Letter of Agreement with Holz Rubber Company in an amount not to exceed \$54,676 and execute a revised Letter of Agreement between the City of Lodi and Holz Rubber Company for the sale of designated municipal electric distribution facilities in the amount not to exceed \$58,000 plus overtime labor charges, as required.

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following Vote:

AYES: COUNCIL MEMBERS -

NOES: COUNCIL MEMBERS -

ABSENT: COUNCIL MEMBERS -

ABSTAIN: COUNCIL MEMBERS -

RANDI JOHL  
City Clerk

2012-\_\_\_\_\_



## CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Adopt Resolution Ratifying the San Joaquin Council of Governments' Annual Financial Plan for Fiscal Year 2012/13

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Public Works Director

---

**RECOMMENDED ACTION:** Adopt resolution ratifying the San Joaquin Council of Governments' Annual Financial Plan for Fiscal Year 2012/13.

**BACKGROUND INFORMATION:** Attached is a summary of the San Joaquin Council of Governments' (COG) Annual Financial Plan (AFP) for Fiscal Year 2012/13. The COG Board adopted the AFP on March 22, 2012. Pursuant to COG's Joint Powers Agreement, the budget is to be ratified by the City of Lodi and the other agencies in the County following adoption by the COG Board.

Staff would like to acknowledge both the importance of the work COG performs and the significant and excellent assistance their staff provides in delivering transportation projects in the City and the entire County.

**FISCAL IMPACT:** This is the operating plan for COG. COG oversees Measure K funding for several projects in Lodi, including street maintenance and Transit, as well as the administration of several federal funding sources.

**FUNDING AVAILABLE:** Not applicable.

---

F. Wally Sandelin  
Public Works Director

Prepared by Paula J. Fernandez, Transportation Manager/Senior Traffic Engineer

FWS/PJF/pmf

Attachment

cc: D. Stephen Schwabauer, City Attorney  
Steve Dial, COG Deputy Executive Director/Chief Financial Officer

---

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager





**RESOLUTION**  
**SAN JOAQUIN COUNCIL OF GOVERNMENTS**

**R-12-38**

**RESOLUTION APPROVING THE ADOPTION OF THE 2012-2013  
ANNUAL FINANCIAL PLAN  
FOR THE SAN JOAQUIN COUNCIL OF GOVERNMENTS**

WHEREAS, the San Joaquin Council of Governments is required by the Joint Powers Agreement to adopt a budget (Annual Financial Plan) annually, and

WHEREAS, the adopted budget is to be sent to the member agencies for ratification.

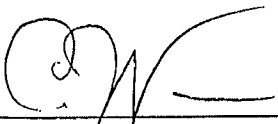
NOW THEREFORE BE IT RESOLVED, that the San Joaquin Council of Governments adopts the FY 2012-2013 Annual Financial Plan and directs the Executive Director to transmit it to the member agencies for ratification.

PASSED AND ADOPTED this 22nd day of March 2012 by the following vote of the San Joaquin Council of Governments, to wit:

AYES: Councilman  
DeBrum, City of Manteca; Councilman Fritchen, Stockton;  
Councilman Hansen, City of Lodi; Mayor Ives, City of  
Tracy; Mayor Johnston, City of Stockton; Vice Mayor  
Mateo, City of Lathrop; Vice Mayor Miller, City of  
Stockton; Supervisor Villapudua, San Joaquin County;  
Councilman Winn, City of Ripon.

NOES: Supervisor Bestoarides, San Joaquin County.

ABSENT: Councilman Laugero, City of Escalon; Supervisor Vogel,  
San Joaquin County.

  
\_\_\_\_\_  
CHUCK WINN  
Chair

**San Joaquin Council of Governments**  
**ANNUAL FINANCIAL PLAN**  
**Fiscal Year 2012/13**  
**Proposed March 22, 2012**

REVENUES	FY 2010-11 Actual	FY 2011-12 Amend. #1 12/15/11	FY 2012-13 Proposed 3/22/12	+/- Change
Federal Grants	\$ 2,230,731	\$ 2,743,270	\$ 3,410,743	\$ 667,473
State Grants	\$ 924,899	\$ 1,540,235	\$ 877,890	\$ (662,345)
Local	\$ 2,849,544	\$ 3,126,182	\$ 3,329,280	\$ 203,098
Interest	\$ 5,400	\$ 5,000	\$ 5,000	\$ -
Other	\$ 1,843	\$ 15,000	\$ 15,000	\$ -
<b>SICOG OPERATING REVENUE</b>	<b>\$ 6,012,417</b>	<b>\$ 7,429,687</b>	<b>\$ 7,637,913</b>	<b>\$ 208,226</b>
Federal Pass-Through	\$ 189,646,000	\$ 119,553,000	\$ 120,000,000	\$ 447,000
State Pass-Through	\$ 4,587,275	\$ 1,500,000	\$ 4,661,369	\$ 3,161,369
Local Pass-Through	\$ 54,900,000	\$ 56,272,500	\$ 59,142,981	\$ 2,870,481
Commercial Paper	\$ 167,000,000	\$ 75,000,000	\$ 75,000,000	\$ -
<b>TOTAL SICOG REVENUE</b>	<b>\$ 422,145,692</b>	<b>\$ 259,755,187</b>	<b>\$ 266,442,263</b>	<b>\$ 6,687,076</b>
<b>EXPENDITURES</b>				
Salaries & Benefits	\$ 3,478,495	\$ 3,636,010	\$ 3,631,164	\$ (4,846)
Services & Supplies	\$ 803,931	\$ 1,108,500	\$ 1,169,367	\$ 60,867
Office Expense	\$ 177,609	\$ 256,000	\$ 255,800	\$ (200)
Communications	\$ 65,845	\$ 60,000	\$ 60,000	\$ -
Memberships	\$ 30,254	\$ 42,000	\$ 42,000	\$ -
Maintenance - Equipment	\$ 2,323	\$ 13,000	\$ 13,000	\$ -
Rents & Leases - Equipment	\$ 128,805	\$ 210,000	\$ 210,000	\$ -
Transportation, Travel & Training (In & Out of State)	\$ 91,482	\$ 110,000	\$ 110,000	\$ -
Allocated Service Cost	\$ 1,476	\$ 4,000	\$ 4,000	\$ -
Publications & Legal Notices	\$ 7,291	\$ 27,000	\$ 27,000	\$ -
Insurance	\$ 83,460	\$ 85,000	\$ 85,000	\$ -
Building Maintenance	\$ 129,481	\$ 60,000	\$ 107,700	\$ 47,700
Building Debt Service	\$ 85,905	\$ 241,500	\$ 254,867	\$ 13,367
Professional Services	\$ 1,434,047	\$ 2,544,677	\$ 2,696,882	\$ 152,205
Fixed Assets	\$ 110,957	\$ 140,500	\$ 140,500	\$ -
Unallocated/Reserve	\$ -	\$ -	\$ -	\$ 0
<b>SICOG OPERATING EXPENDITURES</b>	<b>\$ 5,827,430</b>	<b>\$ 7,429,687</b>	<b>\$ 7,637,913</b>	<b>\$ 208,226</b>
Excess (Deficit) Revenues Over Expenditures (Operating)	\$ 184,987	\$ 0	\$ 0	\$ 0

RESOLUTION NO. 2012-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
RATIFYING THE SAN JOAQUIN COUNCIL OF  
GOVERNMENTS' (SJCOG) 2012-13 ANNUAL  
FINANCIAL PLAN

=====

WHEREAS, the San Joaquin Council of Governments (SJCOG) has approved its fiscal year 2012-13 budget by adopting Resolution No. R-12-38 as shown on the attached, marked Exhibit A; and

WHEREAS, SJCOG is required to forward such Resolution to its member governments for their review and ratification.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby ratify the San Joaquin Council of Governments 2012-13 Annual Financial Plan.

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –  
NOES: COUNCIL MEMBERS –  
ABSENT: COUNCIL MEMBERS –  
ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2012-\_\_\_\_\_



**RESOLUTION**  
**SAN JOAQUIN COUNCIL OF GOVERNMENTS**

**R-12-38**

**RESOLUTION APPROVING THE ADOPTION OF THE 2012-2013  
ANNUAL FINANCIAL PLAN  
FOR THE SAN JOAQUIN COUNCIL OF GOVERNMENTS**

WHEREAS, the San Joaquin Council of Governments is required by the Joint Powers Agreement to adopt a budget (Annual Financial Plan) annually, and

WHEREAS, the adopted budget is to be sent to the member agencies for ratification.

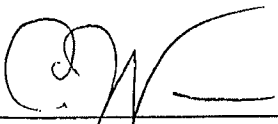
NOW THEREFORE BE IT RESOLVED, that the San Joaquin Council of Governments adopts the FY 2012-2013 Annual Financial Plan and directs the Executive Director to transmit it to the member agencies for ratification.

PASSED AND ADOPTED this 22nd day of March 2012 by the following vote of the San Joaquin Council of Governments, to wit:

AYES: Councilman  
DeBrum, City of Manteca; Councilman Fritchen, Stockton;  
Councilman Hansen, City of Lodi; Mayor Ives, City of  
Tracy; Mayor Johnston, City of Stockton; Vice Mayor  
Mateo, City of Lathrop; Vice Mayor Miller, City of  
Stockton; Supervisor Villapudua, San Joaquin County;  
Councilman Winn, City of Ripon.

NOES: Supervisor Bestoarides, San Joaquin County.

ABSENT: Councilman Laugero, City of Escalon; Supervisor Vogel,  
San Joaquin County.

  
\_\_\_\_\_  
CHUCK WINN  
Chair

**San Joaquin Council of Governments**  
**ANNUAL FINANCIAL PLAN**  
**Fiscal Year 2012/13**  
**Proposed March 22, 2012**

REVENUES	FY 2010-11 Actual	FY 2011-12 Amend. #1 12/15/11	FY 2012-13 Proposed 3/22/12	+/- Change
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<b>TOTAL SICOG REVENUE</b>	<b>\$ 422,145,692</b>	<b>\$ 259,755,187</b>	<b>\$ 266,442,263</b>	<b>\$ 6,687,076</b>
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Allocated Service Cost	\$ 1,476	\$ 4,000	\$ 4,000	\$ -
Publications & Legal Notices	\$ 7,291	\$ 27,000	\$ 27,000	\$ -
Insurance	\$ 83,460	\$ 85,000	\$ 85,000	\$ -
Building Maintenance	\$ 129,481	\$ 60,000	\$ 107,700	\$ 47,700
Building Debt Service	\$ 85,905	\$ 241,500	\$ 254,867	\$ 13,367
Professional Services	\$ 1,434,047	\$ 2,544,677	\$ 2,696,882	\$ 152,205
Fixed Assets	\$ 110,957	\$ 140,500	\$ 140,500	\$ -
Unallocated/Reserve	\$ -	\$ -	\$ -	\$ 0
<b>SICOG OPERATING EXPENDITURES</b>	<b>\$ 5,827,430</b>	<b>\$ 7,429,687</b>	<b>\$ 7,637,913</b>	<b>\$ 208,226</b>
Excess (Deficit) Revenues Over Expenditures (Operating)	\$ 184,987	\$ 0	\$ 0	\$ 0



# CITY OF LODI COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Adopt Resolution Approving the Appropriation of Funds for Oversight Costs Related to PCE/TCE Busy Bee Plume (\$30,000)

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Public Works Director

**RECOMMENDED ACTION:** Adopt resolution approving the appropriation of funds for oversight costs related to PCE/TCE Busy Bee Plume in the amount of \$30,000.

**BACKGROUND INFORMATION:** The City agreed to pay the State Water Resources Control Board (SWRCB) oversight costs in the Busy Bee Plume when it settled with the defendants, as shown in the attached settlement agreement. However, the SWRCB billed these costs to Busy Bee's retired counsel in error. The matter came to light when the SWRCB realized it had years of unpaid fees and acted to shut down the clean up. Per the settlement agreement and the Remedial Action Plan, any oversight costs that occurred after June 2008 are the City's responsibility. The settlement did create a source of funds to pay for the oversight, and the cleanup is reportedly near completion. The appropriation is to cover the past unpaid invoices and those we may receive for the oversight period through June 30, 2012.

**FISCAL IMPACT:** Failure to pay these costs will result in a shutdown of the clean up.

**FUNDING AVAILABLE:** Requested Appropriation:  
Busy Bee Plume Fund (192101): \$30,000

\_\_\_\_\_  
Jordan Ayers  
Deputy City Manager/Internal Services Director

\_\_\_\_\_  
F. Wally Sandelin  
Public Works Director

Prepared by Rebecca Areida-Yadav, Management Analyst  
FWS/RAY/pmf  
Attachment

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

## Settlement Agreement and Mutual Release

### A. Parties

This Settlement Agreement and Mutual Release (the "Agreement") is entered into and among the following parties:

1. The City of Lodi, California, a municipal corporation (the "City");
2. David Mustin; M&P Investments, a California general partnership; the Estate of Frank Paul, Deceased; and the Estate of Alvin Allmendinger, Deceased; collectively referred to as the "Busy Bee Defendants." Dana Chapman, administrator of the Estate of Frank Paul, and Janice Allmendinger as administrator of the Estate of Alvin Allmendinger join with the Busy Bee Defendants for purposes of any release by the City against their respective estates and are jointly referred to as the Busy Bee Parties; and
3. Unigard Insurance Company ("UIC") and Unigard Security Insurance Company ("USIC"); sometimes collectively referred to as "UIC & USIC."

These parties are sometimes collectively referred to herein as the "Settling Parties." Any person or entity identified above may be referred to as a "Party."

### B. Background

1. The City is the owner and operator of the municipal sanitary sewer and water supply systems within the City of Lodi.

2. M&P Investments, a California general partnership, owns certain property commonly referred to as 40 North Main Street, Lodi, California. This property as well as a certain neighboring property are alleged to have become environmentally contaminated as a result of or arising from the operations of the Busy Bee Dry Cleaners, identified at paragraphs 4 and 5, hereinafter referred to as the "Busy Bee Site."

3. David Mustin and Frank Paul were general partners in the partnership of M&P Investments, a California general partnership. UIC, as the insurer of Frank Paul, deceased, has been sued as the Estate of Frank Paul, Deceased, pursuant to the California Probate Code section 550, et seq., in that federal litigation identified at paragraph 12 of this section.

4. Alvin Allmendinger owned and operated the Busy Bee Dry Cleaners at the Busy Bee Site from 1984 through 1987. His operations at this dry cleaners are alleged to have caused environmental contamination. MSI Insurance Company, as the insurer of Alvin Allmendinger, has been sued as the Estate of Alvin Allmendinger, Deceased, pursuant to the California Probate Code section 550, et seq., in that federal litigation identified at paragraph 12 of this section.

5. Fred and Tina Roes owned and operated the Busy Bee Dry Cleaners at the Busy Bee Site from 1987 through October 1996, when the dry cleaning business was destroyed in a fire. During this period, the operations at this dry cleaners are also alleged to have given rise to environmental contamination at the site.

6. Contaminants, including PCE, have been detected in the soil and groundwater beneath and adjacent to the Busy Bee Site.



7. Breaks, cracks, and offset joints found in the City's sewer main in the alleyway that runs north to south located downstream and east of the building currently located at 110 and 112 East Elm Street, Lodi, California (the "Alley"), are alleged to have contributed to contamination at the Busy Bee Site.

8. The California Regional Water Quality Control Board (the "RWQCB") is currently the lead governmental agency responsible for the Busy Bee Site.

9. In the interests of preserving soil and groundwater quality and expediting the investigation and the remediation of the Busy Bee Site, the Busy Bee Defendants have been working with the RWQCB and have taken various measures to investigate and remediate the alleged contamination in the soil and groundwater at the Busy Bee Site.

10. As part of the investigation and remediation measures set forth above, the Busy Bee Defendants have caused to be issued a Draft Remedial Investigation Report and Feasibility Study Workplan prepared by E2C Remediation dated April 1, 2004, submitted to the RWQCB on April 4, 2004. This document and its subsequent amendments are referred to as the "Workplan."

11. As part of the investigation and remediation measures set forth above, E2C Remediation shall prepare and issue a Remedial Action Plan ("RAP"), which will identify and describe the work necessary for clean-up of the Busy Bee Site.

12. On November 2, 2000, and as later amended on May 25, 2001, August 4, 2004 and September 9, 2004, the City filed a Complaint for Damages against the Busy Bee Defendants, among others, in United States District Court for the Eastern District of California, Case No. CIV S-00-2441 FCD/JFM, alleging that the Busy Bee Defendants

were responsible in part for the contamination at the Busy Bee Site (the “Lodi Action”).

13. Earlier, on February 10, 2000, the City filed a Complaint for Damages in the Superior Court of the County of San Joaquin, Case No. CV010002, seeking to enforce an administrative judgment against David Mustin and M&P Investments by requesting a permanent injunction regarding the investigation of alleged environmental contamination at the Busy Bee Site under the authority of a local ordinance known as the Comprehensive Municipal Environmental Response & Liability Ordinance or “MERLO.” The Superior Court entered a default judgment against these defendants and ordered a permanent injunction. Based upon this judgment, the City later filed a lawsuit against UIC seeking to enforce the judgment in federal court, *infra*, at paragraph 20 of this section.

14. The Busy Bee Site is a listed site, as identified in California Health & Safety Code Section 25356, and is therefore subject to the procedures, standards, and other requirements of the Hazardous Substance Account Act.

15. The Busy Bee Defendants have entered into a voluntary agreement with the RWQCB regarding the investigation and remediation of the alleged environmental contamination at the Busy Bee Site.

16. The City has been identified as a potentially responsible party or PRP at the Busy Bee Site, and the City has taken steps to attempt to resolve its alleged liability for contamination at this site.

17. The City has become obligated to pay a judgment exceeding \$300,000 to UIC that was entered in state court in that action titled *City of Lodi v. Unigard Insurance Company*, Sacramento County Superior Court, Case No. 99AS01074. In an effort to

resolve the liabilities arising from this judgment as well as potential liabilities associated with other lawsuits involving UIC/USIC, the City has agreed to participate in this Agreement.

18. The City and the Busy Bee Defendants have an interest in resolving any and all disputes between them regarding their respective alleged liability for the alleged contamination at this site by agreeing to an allocation of responsibilities at the Busy Bee Site, thereby resolving the various claims that have arisen among them.

19. UIC and USIC filed suit in 1998 against the City of Lodi in federal court, now known as *Unigard Insurance Co., et al., v. City of Lodi*, U.S. District Court, E.D. Cal., Case No. S 98-1712 FCD/JFM, sometimes referred to as the "Civil Rights Action." By order of December 22, 2003, UIC & USIC have been held to have the right to obtain a permanent injunction barring the enforcement of certain provisions of Lodi Ordinances 1683 and 1684. As a successful parties, UIC & USIC have the right to seek recovery of their attorneys' fees under the authority of 42 U.S.C. § 1988.

20. In an attempt to enforce the judgment obtained against UIC's insureds, the City of Lodi filed suit in federal court seeking an injunction and other relief in an action known as *City of Lodi, California v. Unigard Insurance Company*, U.S. District Court, E.D. Cal., Case No. S 01-1718 FCD/JFM, sometimes referred to as the "11580 Action."

21. In the 11580 Action, UIC successfully defeated Lodi's motion for summary judgment. As the grounds for refusing to grant the motion were dispositive of Lodi's rights, the District Court entered judgment in UIC's favor on the complaint. In connection with the 11580 Action, UIC has the right to seek the recovery of its attorneys' fees under state law or through its counterclaim filed under the authority of 42 U.S.C. § 1983.

22. Substantial disputes have existed among the Settling Parties regarding their respective liabilities arising from the alleged environmental contamination at the Busy Bee Site. By and through this agreement, the Settling Parties have now resolved to settle any and all disputes among them arising from or related to the alleged environmental contamination or its causes at the Busy Bee Site, including those claims and counterclaims arising from any alleged civil rights violations.

NOW, THEREFORE, in consideration for the mutual promises set forth in this Agreement, the City, the Busy Bee Defendants, and UIC/USIC agree to resolve their differences in the manner set forth below.

C. Mutual Promises and Conditions of Settlement

1. Preconditions to Settlement of Allocation Rights

This Agreement contemplates that the Settling Parties will each take or authorize that certain steps be taken for the purpose of obtaining a release, one from the other, and as identified below:

- (a) As a result of an agreement between the RWQCB and the Busy Bee Defendants, the Busy Bee Defendants have agreed to complete the remaining site investigation for the Busy Bee Site, including pilot studies and subsequent feasibility studies (excluding the sewer line that runs in the Alley from manhole numbers K2070 to K2090 to K2091) leading to the creation and approval of a remedial action plan, or "RAP," subject to the limitations of subparagraph (c) below. The RAP shall require remediation until such time as the RWQCB issues a "no further action" letter or its

functional equivalent. As a precondition to this Agreement, the Busy Bee Defendants agree that they will be responsible for all reasonable and necessary costs and expenses relating to the preparation and RWQCB approval of the RAP, including the pilot study.

- (b) The City agrees that it will cooperate and reasonably assist with any permits (without fee), rights of way, or other municipal approvals related to the work to be performed by E2C at the Busy Bee Site.
- (c) In order to fund the work required by the RAP, the Busy Bee Defendants shall fund a "Pay for Performance" ("PFP") contract with E2C Remediation. A copy of this contract is attached as Exhibit A. While the Busy Bee Defendants will be responsible for the initial negotiation of this contract, in consideration of the mutual release that is found in this Agreement, the City will be named as a third party beneficiary to this contract. To purchase this contract, the Busy Bee Defendants shall be required to pay the PFP contract price in an amount up to the available total liability policy limits of UIC Policy no. MP 50 5494 and MSI Policy no. MP-5-223344496. The amounts required to fund this contract shall be deposited into a bank account ("Cleanup Account") for timed withdrawal by E2C pursuant to the terms of the PFP contract.

In addition to the payment(s) funding the PFP contract, the Busy Bee Defendants agree that they will pay \$100,000 into a trust account as a buffer known as the "Busy Bee Buffer." Once all available funds in the Cleanup Account and the City Buffer Account (described in Part C.1.d below) have been exhausted, the funds in the Busy Bee Buffer may be used to pay any reasonable expenses necessary to obtain a "no further

action letter” or its functional equivalent, if the PFP contract terminates without obtaining a “no further action letter” or its functional equivalent. Any residual funds in the Busy Bee Buffer will revert to the Busy Bee Defendants’ insurers if any amounts remain following the issuance of a no further action letter.

- (d) The City shall be responsible for paying any oversight fees charged by the RWQCB for the Busy Bee Site once the RAP commences, first utilizing a trust account known as the “City Buffer Account.” Any and all funds available as a result of the settlement between the City and Defendant Fred Roes shall be paid into the City Buffer Account. In addition to the settlement funds from Defendant Fred Roes, should the City settle with Brackett’s Garage, any settlement proceeds are to be deposited into the City Buffer Account. If there is a default in the performance of the PFP by E2C, the funds in the City Buffer Account shall be the first funds used for payment of any expenses above the remaining PFP contract price in the Cleanup Account for the completion of the RAP. Any funds remaining in the City Buffer Account at the time the RAP is completed shall revert to the City.
- (e) In the event the RAP is not completed and the PFP contract has been terminated, any remaining funds in the Cleanup Account shall be available for the City to use to complete the RAP.
- (f) The City’s repair of the sewer immediately downstream from the Busy Bee facility must be done in coordination with E2C’s work under the PFP contract.

2. Allocation of Responsibilities for Busy Bee Site

- (a) In consideration of UIC's waiver of its right to collect any judgment or attorneys' fees in connection with (1) that case known as *City of Lodi v. Unigard Insurance Company*, Sacramento Superior Court, Case No. 99AS01074, (2) the Civil Rights Action, (3) the 11580 Action, and (4) the performance of those preconditions imposed upon the Busy Bee Defendants, identified above, the City agrees that it alone will be responsible for any additional or future claims made by any other persons or entities claiming damages or injuries or asserting legal rights as a result of environmental contamination that is alleged to have taken place from the operations of the Busy Bee Dry Cleaners and that it will make no further demands on the Busy Bee Defendants. If the City defaults in its obligations and UIC elects to seek payment of those fees and costs permitted by this Agreement, the City will continue to have the same duties identified above. In connection with this promise, the City will file a Satisfaction of Judgment in San Joaquin County Superior Court, Case No. CV010002.
- (b) In consideration for the City's agreeing to accept the risk of E2C's inability to complete the RAP within the original contract price, the cost and expense of monitoring the RAP, and any other form of monetary expense or damages that may arise as a result of the releases exchanged by this Agreement, UIC & USIC will file a Satisfaction of Judgment in Sacramento Superior Court Case No. 99AS01074 within thirty (30) days after the settlement appearing in this Agreement is held to bar any rights of contribution by any third parties in a final order or judgment entered in

that action known as the Lodi Action. UIC & USIC will also waive any right to attorneys' fees arising from the appeal to the Court of Appeal for the Third Appellate District.

If the court refuses to grant the contribution bar, then this settlement will be deemed to have failed, and all Parties will be responsible to protect their respective interests as a result of this failure. This failure will allow UIC & USIC to seek recovery on its claims for attorneys' fees in *Unigard Insurance Co., et al., v. City of Lodi*, U.S. District Court, E.D. Cal., Case No. S 98-1712 FCD/JFM and *City of Lodi, California v. Unigard Insurance Company*, U.S. District Court, E.D. Cal., Case No. S 01-1718 FCD/JFM.

### 3. Release

- (a) In consideration of the promises exchanged above and the granting of a contribution bar as contemplated by this Agreement, the City forever releases the Busy Bee Parties and each of their respective administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, parents, subsidiaries, affiliated and related legal entities, agents, employees, servants, representatives, heirs, and associations connected with them, including without limitation their insurers, sureties, and attorneys, of and from any and all claims, demands, causes of action, obligations, liens, damages, losses, costs, and attorneys', consultants', and experts' fees and expenses of every kind and nature whatsoever, known and unknown, fixed or contingent, arising from, related to, or connected with the alleged contamination in, at, or around the Busy Bee Site and more particularly described in the United States District Court, Eastern District of California, Action No. CIV-S-00-2441 FCD/JFM, and California



Superior Court, County of San Joaquin, Action No. CV010002. The City also forever releases UIC and USIC from any and all claims, demands, causes of action, obligations, liens, damages, losses, costs, and attorneys', consultants', and experts' fees and expenses of every kind and nature whatsoever, known and unknown, fixed or contingent, arising from, related to, or connected with the alleged contamination in, at, or around the Busy Bee Site or that arise from those policies of insurance issued or allegedly issued to M&P Investments.

- (b) In consideration of the promises exchanged above and the granting of a contribution bar as contemplated by this Agreement, the Busy Bee Defendants forever release the City and each of its elected officials, appointed officials, managers, officers, administrators, assigns, affiliated and related legal entities, agents, employees, servants, representatives, and political associations or subdivisions, including without limitation its insurers and sureties, of and from any and all claims, demands, causes of action, obligations, liens, damages, losses, costs, and attorneys', consultants', and experts' fees and expenses of every kind and nature whatsoever, known and unknown, fixed or contingent, arising from, related to, or connected with the alleged contamination in, at, or around the Busy Bee Site and more particularly described in the United States District Court, Eastern District of California, Action No. CIV-S-00-2441 FCD/JFM, and California Superior Court, County of San Joaquin, Action No. CV010002.
- (c) In consideration of the promises exchanged above, including but not limited to the City's agreement to accept responsibility for completion of the RAP and the risk of any further claims arising from or related to the

actual or alleged environmental contamination allegedly arising from the operations of the Busy Bee Dry Cleaners, and provided that a final order has been entered finding that the settlement between the Busy Bee Defendants and the City of Lodi is in good faith, UIC & USIC agree that upon the issuance of a no further action letter, or the equivalent, by the lead state agency overseeing the RAP:

- (i) UIC & USIC will forever release the City and each of its elected officials, appointed officials, managers, officers, administrators, assigns, affiliated and related legal entities, agents, employees, servants, representatives, and political associations or subdivisions, including without limitation its insurers and sureties, of and from any and all claims, demands, causes of action, obligations, liens, damages, losses, costs, and attorneys', consultants', and experts' fees and expenses of every kind and nature whatsoever, known and unknown, fixed or contingent, arising from, related to, or connected with the alleged contamination in, at, or around the Busy Bee Site, except that UIC/USIC shall have the right to enforce a permanent injunction as ordered in *Unigard v. City of Lodi*, U.S. District Court, ED Cal, Case No. S 98-1712 FCD/JFM. If the City violates this injunction, UIC & USIC will have any and all rights to seek such order, sanctions, and/or damages as may be appropriate.
- (ii) Until the no further action letter or its equivalent is issued, UIC & USIC and the City agree that they will jointly stipulate to a stay of the lawsuits filed in the U.S. District Court for the Eastern District of California, *Unigard v. City of Lodi*, Case No. S 98-1712 FCD/JFM, and *City of Lodi v. Unigard*, Case No. S 01-1718 FCD/JFM, and seek

an order confirming this stay until the contingencies to this settlement have been met.

- (iii) If the conditions to this settlement should fail, UIC & USIC shall have the right to collect its attorneys' fees, as permitted by law, in those lawsuits filed in the U.S. District Court for the Eastern District of California, *Unigard v. City of Lodi*, Case No. S 98-1712 FCD/JFM, and *City of Lodi v. Unigard*, Case No. S 01-1718 FCD/JFM.

#### 4. Dismissal

Within 60 days after a final order granting the motion for a good faith settlement has been entered, the City and the Busy Bee Defendants shall dismiss with prejudice any and all claims, actions, administrative actions, and lawsuits (including appeals) pending in all state and federal jurisdictions as to one another including, but not limited to, the action pending in the United States District Court for the Eastern District of California, Case No. CIV S-00-2441 FCD/JFM, as well as in any administrative venues. Consistent with such dismissal, the City shall support the Busy Bee Defendants' motion for good faith settlement, seeking to bar any claims from other parties for contribution related to any alleged or actual contamination at the Busy Bee Site. In turn, the Busy Bee Defendants shall support the City's motion for good faith settlement seeking to bar any claims from other parties for contribution related to any alleged or actual contamination at the Busy Bee Site.

In the California Superior Court, County of San Joaquin, Case No. CV010002, the City agrees that it will file a satisfaction of judgment of the Busy Bee Defendants therein and a dismissal with prejudice as to any remaining defendants within 60 days after a good faith settlement order has been issued regarding the settlement between the City and the Busy Bee Defendants. UIC/USIC waives its right to collect the judgment against the City in the

California Superior Court, County of Sacramento, Case No. 99 AS 01074, by filing a satisfaction of judgment therein within 60 days after a good faith settlement order has been issued regarding the settlement between the City and the Busy Bee Defendants.

If a final good faith settlement order has been issued regarding the settlement between the City and the Busy Bee Defendants, then within twenty (20) days after the no further action letter or its equivalent is received by UIC/USIC, UIC/USIC will file a dismissal in the 11580 Action. The Civil Rights Action will have a judgment entered confirming the permanent injunction.

#### 5. Scope of this Agreement

It is expressly acknowledged that Settling Parties enter into this Agreement to compromise, settle, and fully resolve any and all claims as to both liability and damages related to the environmental contamination at the Busy Bee Site, and that this Agreement settles, resolves, and releases any and all past, present, and future claims among the Settling Parties regarding the actual, alleged, or threatened environmental contamination at the Busy Bee Site. This Agreement contemplates the global termination of all litigation and past, present, and future disputes, judgments, claims, actions, administrative proceedings, and lawsuits among the City, UIC/USIC, and each of the Busy Bee Parties arising out of the alleged or threatened contamination at or around the Busy Bee Site. The terms of this Agreement are not intended to nor do they create any interest in this settlement to any third party under a third party beneficiary theory or any other theory.

This release is intended to extend to the respective heirs, employees, officers, officials, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives, and all persons, firms, associations, and/or corporations connected with them, including,

without limitation, their sureties and/or attorneys, except as otherwise provided by this Agreement.

Should Lehman Brothers or Envision Law Group, or any members thereof, sue or make a claim on any of the Busy Bee Defendants or UIC/USIC as a result of this Agreement, the Busy Bee Defendants and/or UIC/USIC will have the right to seek an adjudication of their respective rights and, if appropriate, to seek damages or other relief against Lehman Brothers or Envision Law Group or any members thereof.

6. **No Admission of Liability**

By contributing to the settlement of this claim, the Settling Defendants have not admitted and do not admit that they are liable for any damages claimed by the City and/or the other parties to any lawsuits or proceedings. The receipt of any settlement proceeds or any payments for the investigation and/or remediation at the Busy Bee Site shall not be considered an admission of liability. This settlement represents an agreement resulting from disputed issues of fact and of law. By entering into this Agreement, the Settling Parties do not admit that they, individually or jointly, have any liability or obligation for the actual or alleged environmental contamination within Lodi. None of the terms reflected herein nor any statements or communications made by the Settling Parties or their agents, attorneys, or insurers during the negotiations leading to this Agreement shall be considered admissions of liability by or on behalf of any of the Settling Parties.

7. **No Liens or Encumbrances**

Each Settling Party represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Agreement. Each Settling Party further represents and warrants that it has the sole right and

exclusive authority to execute this Agreement and to agree to the terms herein, and that it has not sold, assigned, transferred, conveyed, or otherwise disposed of any claims, demands, obligations, or causes of action referred to in this Agreement. If Lehman Brothers or Envision Law Group should claim an interest in the consideration identified in this Agreement, the City will be obligated to defend, indemnify, and hold harmless any Settling Party that is the subject of the claim or suit. In no event shall any other Settling Party be required to pay any additional amounts to settle any claims by that third party.

8. Uncertainty of Circumstances

Each party hereto acknowledges that there is a risk that, subsequent to the execution of this Agreement, it may incur, suffer, or sustain an injury, loss, damages, costs, attorneys' fees, expenses, or any of these, which are in some way caused by or connected with the matters released and referred to above, which are unknown and unanticipated at the time this Agreement is signed, or which are not presently capable of being ascertained, and further that there is a risk that such damages as are known may become more serious than the Settling Parties now expect or anticipate. Nevertheless, each of the Settling Parties hereto acknowledges that this Agreement has been negotiated and agreed upon in light of that realization and hereby expressly waives any rights it may have in such unsuspected claims. This release of claims is not intended to release any contractual rights that a policy holder may have against his, her, or its own insurer.

9. Waiver of Rights (Civil Code § 1542)

In entering into this settlement agreement, each Settling Party has had the benefit of legal counsel and has been advised of, understands, and knowingly and specifically waives its rights under California Civil Code Section 1542, which provides as follows:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE - A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which, if known by him, must have materially affected his settlement with debtor.

Each party hereto further waives all rights under any similar law in any state or territory of the United States.

**10. Attorneys' Fees and Costs**

Except as set forth in Section C.3(c)(i), the City and the Busy Bee Defendants acknowledge and agree that they are to bear their owns costs, expenses, expert and consultant fees, and attorneys' fees arising out of the matters set forth herein and connected to the litigation surrounding the Busy Bee Site, the negotiation, drafting, and execution of this Agreement, and all matters arising out of or connected therewith.

Except as set forth in Section C.3(c)(i), the City and UIC & USIC acknowledge and agree that they are to bear their owns costs, expenses, expert and consultant fees, and attorneys' fees arising out of the matters set forth herein and connected to the litigation surrounding the Busy Bee Site, the negotiation, drafting, and execution of this Agreement, and all matters arising out of or connected therewith.

**11. Continuing Jurisdiction**

Following the execution of this Agreement, the Honorable Frank C. Damrell, Jr., of the United States District Court for the Eastern District of California shall retain jurisdiction over this action for purposes of enforcement of the terms of this Agreement pursuant to California Code of Civil Procedure section 664.6 or any other similar law in any state or territory of the United States as well as the permanent injunction in *Unigard*

*v. City of Lodi*, S 98-1712 FCD/JFM.

**12. Breach of the Agreement**

In the event of litigation or motion practice arising out of or relating to the performance of or the breach of this Agreement, including its interpretation, the prevailing Party or Parties shall recover their reasonable attorneys' fees and costs incurred in that litigation or motion practice.

**13. Integrated Agreement**

This Agreement supersedes any prior communications, agreements, and understandings regarding the matters contained herein between the signatories hereto or their representatives. Any representation, promise, or condition in connection with such matters that is not incorporated in this Agreement shall not be binding upon any of the Settling Parties.

**14. Binding Effect**

Subject to the conditions found in this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the Settling Parties as well as their respective officers and directors, the respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives, and all persons, firms, associations, and/or corporations connected with them, including, without limitation, their sureties and/or attorneys, except as otherwise provided by this Agreement.



15. Severability

If any provision or any part of any provision of this Agreement is for any reason held to be invalid, unenforceable, or contrary to any public policy, law, statute, and/or ordinance, then the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

16. Benefit of Counsel/Consultants

In entering into this Agreement, each Party represents and warrants that he, she, or it is not relying on any representations, opinions, conclusions, recommendations, or opinions expressed by, provided by, or inferred from any other Party to this Agreement, any attorney for any other Party, or any other Party's experts, consultants, or agents.

Each Party represents and warrants that it has been fully advised by its attorney concerning the effect and finality of this Agreement, and that the Party understands, without reservation or doubt, the effect and finality of this Agreement.

Each Party further represents and warrants that it desires to forever and fully release and discharge all other Parties to this Agreement to the extent stated in this Agreement and understands that by execution of this Agreement, no further claims against any Party, arising out of the matters released, may ever be asserted by any Party hereto except as otherwise provided for in this Agreement in Section C.3(c)(i).

17. Counterparts

This Agreement may be executed in counterparts, and all so executed shall be binding upon all Parties hereto, notwithstanding that the signatures of the Parties' designated representatives do not appear on the same page.

**18. Representations and Warranties**

The Settling Parties make the following representations and warranties to the extent that the representation is related to its own respective knowledge, interests, or action:

- (a) Each Party warrants that, after receiving advice of counsel, he, she or it has freely agreed to enter into this Agreement;
- (b) Each Party warrants that it is fully authorized to enter into this Agreement on behalf of itself and that each Party's signatory is authorized to sign on behalf of the Party identified; and
- (c) All Parties separately warrant and represent that they have read this entire Agreement and know the contents hereof, that the terms hereof are contractual and not merely recitals, and that they have signed this Agreement of their own free will, respectively, and without duress.

**19. Governing Law**

This Agreement is entered into and shall be interpreted in accordance with the laws of the State of California.

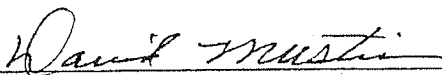
**20. Warning as Required by Law**

All persons signing this release must read and understand it in its entirety and truly intend to terminate, irrevocably, all their rights to further pursue or prosecute

their causes of action, demands, or claims against each of the other Settling Parties herein. In particular, please note:

- (a) The extensive description of the persons released. Some of the persons released may not be parties to the lawsuit(s), claims, actions, or judgments to be dismissed, but nevertheless release of them is required as a necessary part of the settlement evidenced by this Agreement and release.
- (b) Each of the undersigned hereby authorizes and directs the attorney of the undersigned to forthwith dismiss with prejudice any and all pending lawsuits, claims, actions, or any other type of legal proceeding as set forth herein.
- (c) No promise, inducement, or agreement not expressed herein has been made to the undersigned.

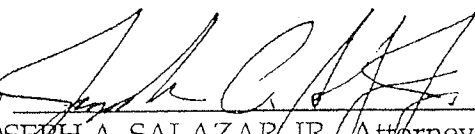
DATED:

  
DAVID MUSTIN, Individually and as a  
General Partner of M&P INVESTMENTS

APPROVED AS TO FORM

DATED: 10/15/04

MAYALL, HURLEY, KNUTSEN, SMITH &  
GREEN

By   
JOSEPH A. SALAZAR, JR., Attorneys for M&P  
INVESTMENTS and DAVID MUSTIN

APPROVED AS TO FORM

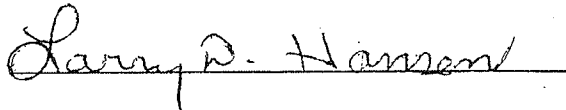
DATED: 10/15/04

LEWIS BRISBOIS BISGAARD & SMITH  
LLP

By 

GLENN A. FRIEDMAN, Attorneys for M&P  
INVESTMENTS and DAVID MUSTIN

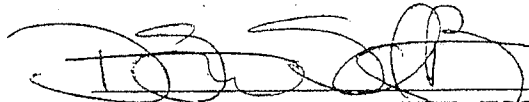
DATED: 10/15/04



LARRY D. HANSEN, MAYOR, CITY OF LODI

APPROVED AS TO FORM

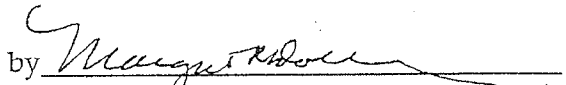
DATED:



STEPHEN SCHWABAUER, ESQ., Office of the  
City Attorney, CITY OF LODI

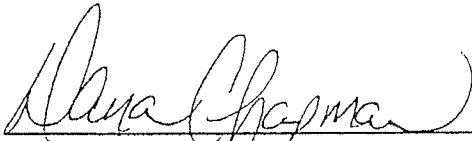
FOLGER LEVIN & KAHN, LLP

DATED: 10/15/04

by 

MARGARET DOLLBAUM, Attorneys for the  
CITY OF LODI

DATED: 10/18/04

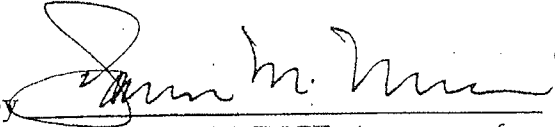


DANA CHAPMAN, Administrator of the  
ESTATE OF FRANK PAUL

APPROVED AS TO FORM


DATED: 10/15/04

BULLIVANT HOUSER BAILEY, PC

By 

M. TAYLOR FLORENCE, Attorneys for  
Defendant, ESTATE OF FRANK PAUL,  
Deceased

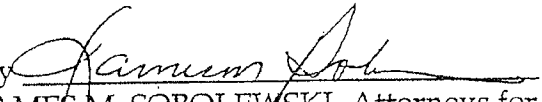
DATED: 10/21/04

  
JANICE ALLMENDINGER, Administrator for  
the ESTATE OF ALVIN ALLMENDINGER

APPROVED AS TO FORM

DATED: 10/15/04

LAW OFFICE OF JAMES M. SOBOLEWSKI

By   
JAMES M. SOBOLEWSKI, Attorneys for  
Defendant, ESTATE OF ALVIN  
ALLMENDINGER, Deceased

DATED:

\_\_\_\_\_  
SCOTT KALLANDER, ASST. CORP.  
SECRETARY  
On Behalf of UNIGARD INSURANCE  
COMPANY AND UNIGARD SECURITY  
INSURANCE COMPANY

APPROVED AS TO FORM

DATED:

BULLIVANT HOUSER BAILEY, PC

By \_\_\_\_\_  
M. TAYLOR FLORENCE, Attorneys for  
Defendant, ESTATE OF FRANK PAUL,  
Deceased

DATED:

\_\_\_\_\_  
JANICE ALLMENDINGER, Administrator for  
the ESTATE OF ALVIN ALLMENDINGER

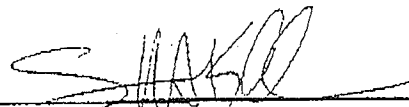
APPROVED AS TO FORM

DATED:

LAW OFFICE OF JAMES M. SOBOLEWSKI

By \_\_\_\_\_  
JAMES M. SOBOLEWSKI, Attorneys for  
Defendant, ESTATE OF ALVIN  
ALLMENDINGER, Deceased

DATED:

  
\_\_\_\_\_  
SCOTT KALLANDER, ASST. CORP.  
SECRETARY  
On Behalf of UNIGARD INSURANCE  
COMPANY AND UNIGARD SECURITY  
INSURANCE COMPANY

## 2. JV#

TO:	Internal Services Dept. - Budget Division		
3. FROM:	Rebecca Areida-Yadav	5. DATE:	05/10/2012
4. DEPARTMENT/DIVISION: Public Works			

	FUND #	BUS. UNIT #	ACCOUNT #	ACCOUNT TITLE	AMOUNT
A. SOURCE OF FINANCING	192		3205	Fund Balance	\$ 30,000.00
B. USE OF FINANCING	192	192101	8099	Busy Bee Oversight	\$ 30,000.00

Please provide a description of the project, the total cost of the project, as well as justification for the requested adjustment. If you need more space, use an additional sheet and attach to this form.

Oversight costs related to the PCE/TCE Busy Bee Plume site.

If Council has authorized the appropriation adjustment, complete the following:

Meeting Date: \_\_\_\_\_ Res No: \_\_\_\_\_ Attach copy of resolution to this form.

Department Head Signature: Cheryl for PWS

Deputy City Manager/Internal Services Manager	Date

Submit completed form to the Budget Division with any required documentation. Final approval will be provided in electronic copy format.

RESOLUTION NO. 2012-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING APPROPRIATION OF FUNDS FOR  
OVERSIGHT COSTS RELATED TO PCE/TCE BUSY  
BEE PLUME

=====

WHEREAS, the City agreed to pay the State Water Resources Control Board oversight costs in the Busy Bee Plume when it settled with the defendants; however, these costs were billed by the Board to Busy Bee's retired counsel in error; and

WHEREAS, per the Settlement Agreement and Remedial Action Plan letter, oversight costs incurred after June 2008 are the City's responsibility; and

WHEREAS, the settlement did create a source of funds to pay for the oversight, and the cleanup is reportedly near completion; and

WHEREAS, the requested appropriation will cover past unpaid invoices and those we may receive for the oversight period through June 30, 2012.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the appropriation of \$30,000 from the Busy Bee Plume Fund for State Water Resources Control Board oversight costs related to the PCE/TCE Busy Bee Plume.

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2012-\_\_\_\_\_





## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Receive Report Regarding League of California Cities Communications Pertaining to Assembly Bill 2312

**MEETING DATE:** June 6, 2012

**PREPARED BY:** City Clerk

---

**RECOMMENDED ACTION:** Receive report regarding League of California Cities (League) communications pertaining to Assembly Bill 2312.

**BACKGROUND INFORMATION:** The City received a request for communication from the League pertaining to AB 2312. A letter of opposition to AB 2312, signed by the Mayor, was sent out immediately as the bill was being heard in committee shortly.

As you are aware, existing law provides that qualified patients, persons with valid identification cards, and designated primary caregivers of qualified patients and persons with identification cards under certain specified circumstances are not subject to state criminal sanctions for the possession, sale, transport, or other proscribed acts relating to marijuana. This bill authorizes these individuals to associate within the State of California as collectives, cooperatives, and other business entities to cultivate, acquire, process, possess, transport, test, sell, and distribute marijuana for medical purposes. The bill would provide that these persons are not subject to arrest, prosecution, or specified sanctions for possessing, selling, transporting, or engaging in other proscribed acts relating to marijuana, unless they are not in compliance with the registration requirements described in the bill. Given the status of litigation in this arena, it is prudent to understand first the extent of both local and state authority in this area following the Supreme Court rulings before the Legislature establishes a new statewide regulatory scheme.

The above-referenced letter was sent as requested on May 7, 2012 and this report is provided for informational purposes only.

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** Not applicable.

---

Randi Johl  
City Clerk

---

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

## Randi Johl

---

**From:** Randi Johl  
**Sent:** Monday, May 21, 2012 10:05 AM  
**To:** Randi Johl  
**Subject:** FW: Letters needed

-----Original Message-----

**From:** Stephen R. Qualls [mailto:squalls@cacities.org]  
**Sent:** Wed 5/2/2012 10:20 AM

**Subject:** Letters needed

Please have your Mayor or Council send a letter opposing AB 2312. In short, the bill would require a city to issue one permit for a marijuana dispensary for every 50,000 citizens in their community. If the city chooses not to, it must pay for an election and incur other costs. I have included further information below as well as an electronic version and a sample letter. If you have any questions, please contact me. Thank you,

ACTION ALERT!!

AB 2312 (Ammiano)  
Controlled substances.

Oppose

Quick Facts for AB 2312:

Bill creates state oversight board and erodes local control. AB 2312 creates the Board of Medical Marijuana Enforcement within the California Department of Consumer Affairs to oversee and regulate the medical marijuana industry in California. This steps on the toes of last year's AB 1300 (Blumenfeld), which provides that local jurisdictions have the authority to regulate the location, operation, and establishment of medical marijuana cooperatives and collectives.

Efforts are premature and redundant of work being done in the California Supreme Court. Regardless of views on medical marijuana, this legislation duplicates the state Supreme Court's efforts and further confuses the issue for cities and state agencies. Opinions will be delivered on three cases that will help clarify the local, state, and federal relationship in regards to medical marijuana dispensary regulations, including the specific question of a city's authority to ban dispensaries.

Cities Have to Pay Up to Opt Out of One-Size-Fits-All Formula. Local resources would be better spent on providing safety and community services in all areas of need, not just medical marijuana regulation. Instead, AB 2312 requires cities to pay-up if they want to opt out of the population-driven formula for how many dispensaries are required in their boundaries. Even if a city still wishes to authorize dispensaries, if the number is less than one dispensary for every 50K people they have to hold a costly election and pass a voter approved ordinance enacting that change. Cities with less than 50K population seeking to ban dispensaries must conduct a time-consuming study and report to the to-be-created state marijuana regulation board that medical marijuana is reasonably accessible in their jurisdiction.

AB 2312 has been re-referred to the Committee on Appropriations.

ACTION:

LETTERS of city opposition by fax to targeted members of the Assembly Committee on Appropriations are the priority; however all members of the committee should receive a

letter. Republican committee members' contact information is included (following targeted priority list). This bill is currently not scheduled for hearing, but we anticipate it to be heard within the next couple weeks- please send letters ASAP (sample opposition letter and talking points included).

#### Talking Points:

. AB 2312 is premature and is redundant of work being done in the California Supreme Court. Rulings are expected on three cases that will help clarify the local, state and federal relationship in regards to medical marijuana dispensary regulations and this legislation is simply duplicating their efforts.

. Legislation was passed in 2011 (AB 1300, Blumenfield) that provided local jurisdictions with the authority to regulate the location, operation, or establishment of medical marijuana cooperatives or collectives. Before the rules are changed on cities again, we should wait to see how current law helps or impedes regulation.

. Setting a statewide protocol for how local jurisdictions may regulate medical marijuana dispensaries isn't practical in that cities need to decide how their resources are best used. The minimum dispensary establishment should be based on the desires and wishes of the community, not a population-driven formula.

. Cities who would like to stray from the regulations presented in this bill would be slapped with financial burdens such as analysis, research and costly elections. Conducting such work and/or special election would cost my city \$\$\$\$. Local resources would be better spent on providing health and safety services to our community in all areas of need, not just medical marijuana regulation.

. Any legislative work regarding medical marijuana dispensary regulations should come, if necessary, after the California Supreme Court rulings.

Register for the League of California Cities Annual Conference before May 25th and save \$50.00 off both registration and accommodations.  
Click on the link for more information.

[<https://mail.cacities.org/owa/attachment.ashx?id=RgAAAACy8fHTR2LKSbH7v1WA%2bKroBwCJIF8QxE1YR5pVkcGOVZ7pAAAGc5DHAACi1UlkD4vzS51QTLjAf8aNAAyDS6WAAAJ&attcnt=1&attid0=BAABAAAA&attcid0=image001.jpg%4001CD26BE.D04B4D10>] <<http://www.cacities.org/AC>>

Stephen Qualls  
Central Valley Regional Public Affairs Manager  
League of California Cities

209-614-0118  
Fax 209-883-0653  
[squalls@cacities.org](mailto:squalls@cacities.org)<<mailto:squalls@cacities.org>>

CITY COUNCIL

JOANNE MOUNCE, Mayor  
ALAN NAKANISHI,  
Mayor Pro Tempore  
LARRY D. HANSEN  
BOB JOHNSON  
PHIL KATZAKIAN

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 333-6702 / FAX (209) 333-6807  
[www.lodi.gov](http://www.lodi.gov)      [cityclerk@lodi.gov](mailto:cityclerk@lodi.gov)

KONRADT BARTLAM,  
City Manager

RANDI JOHL, City Clerk

D. STEPHEN SCHWABAUER  
City Attorney

May 7, 2012

The Honorable Felipe Fuentes  
Chair, Assembly Appropriations Committee  
State Capitol Building, Room 2114  
Sacramento, California 95814  
Via Facsimile: (916) 319-2139

SUBJECT: AB 2312 (Ammiano). Controlled Substances  
Notice of Opposition

Dear Assembly Member Fuentes:

The City of Lodi (Lodi) opposes Assembly Bill 2312 (Ammiano), the Medical Marijuana Regulation and Control Act. We recognize the author's effort to provide greater clarity under the state medical marijuana laws given the current uncertainty related to regulation at both the state and local levels. However, the bill is premature. It could further confuse the issues at hand rather than resolve them while creating significant new costs for local jurisdictions.

AB 2312 seeks to set statewide protocol for how local jurisdictions may regulate medical marijuana dispensaries but we have several concerns with the proposed new population-based standards and costly, time consuming process governing the establishment of dispensaries. The most immediate concern is that the California Supreme Court is now reviewing permissible local regulation of medical marijuana distribution in conjunction with state and federal law in three cases that it accepted this year including two cases that speak directly to a city's authority to ban. To avoid further confusion for both local jurisdictions and state agencies, and to avoid duplication of effort between the courts and the legislature, action on AB 2312 should be postponed until the state Supreme Court issues its opinion later this year.

In addition, AB 2312 is troubling because of the price tag attached to retaining local authority, as granted under Assembly Bill 1300 (Blumenfield; 2011). AB 2312 only offers cities the option to change the mandatory number of dispensaries in their jurisdiction if they pay. For cities with populations over 50,000, such as Lodi, it requires holding a costly election to pass a voter approved ordinance. A special election for Lodi could cost anywhere between \$100,000 and \$150,000. Resources would be better spent on providing health and safety services in all areas of need, not just medical marijuana regulation.

It would be more prudent to understand the extent of both local and state authority in this area following the Supreme Court rulings before the Legislature establishes a new statewide regulatory scheme at the same time that local jurisdictions are implementing AB 1300 under which local authority was clearly intended and preserved. For these reasons, the City of Lodi opposes AB 2312.

Sincerely,

A handwritten signature in cursive script that reads "JoAnne Mounce". The signature is written in dark ink and is positioned above the printed name and title.

JoAnne Mounce  
Mayor

C: Honorable Tom Ammiano (*Via Facsimile* – (916) 319-2113)  
Stephen Qualls, Regional Representative, League of California Cities



## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt the Following Resolutions Pertaining to the November 6, 2012, General Municipal Election:

(a) Resolution Calling And Giving Notice of the General Municipal Election to be Held on Tuesday, November 6, 2012, for the Election of Certain Officers of the City;

(b) Resolution Requesting the San Joaquin County Board of Supervisors to Render Specified Services for the Conduct of a General Municipal Election to be Held on Tuesday, November 6, 2012;

(c) Resolution Setting Forth the Council's Policy Regarding Impartial Analyses, Arguments, and Rebuttal Arguments For Any Measure(s) That May Qualify to be Placed on the Ballot for the November 6, 2012, General Municipal Election; and

(d) Resolution Adopting Regulations for Candidates for Elective Office Pertaining to Candidates' Statements Submitted to the Voters at the General Municipal Election to be Held on Tuesday, November 6, 2012

**MEETING DATE:** June 6, 2012

**PREPARED BY:** City Clerk

---

**RECOMMENDED ACTION:** Adopt the resolutions pertaining to the November 6, 2012, General Municipal Election with respect to calling and noticing the election, consolidating the election with the County, setting forth the policy for any measures, and adopting regulations for candidates' statements, as required by the California Elections Code.

**BACKGROUND INFORMATION:** The 2012 General Municipal Election for two City Council seats will be held on Tuesday, November 6, 2012. The current terms of Council Member Johnson and Mayor Mounce are expiring.

It is necessary for the City Council to adopt a resolution calling and giving notice of the holding of a General Municipal Election in the City of Lodi on November 6, 2012. On October 19, 1988, the City Council adopted Ordinance No. 1438 consolidating municipal elections with statewide general elections. The ordinance was approved by the San Joaquin County Board of Supervisors on February 7, 1989.

It is also necessary for the City to enter into an agreement with San Joaquin County to provide certain services for the conduct of the November 6, 2012, General Municipal Election. The City will reimburse the County for these services when the work is completed and upon presentation of a properly audited invoice to the City.

---

**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

The Elections Code states that when a City measure qualifies for a place on the ballot, the governing body may direct the elections official to transmit a copy of the measure to the City Attorney for preparation of an impartial analysis. The Elections Code further sets forth the process for receiving arguments for and against the measure(s) and for the submittal of rebuttal arguments.

The Elections Code allows each candidate, for a non-partisan elective office in a city, to prepare a statement to be included with the sample ballot and mailed to each registered voter. Candidate statements are designed to acquaint voters with a candidate's qualifications for the office they are seeking. The law requires the Council to adopt a policy no later than seven (7) days before the nomination period opens regarding the candidates' statements and obligation for payment. Elections Code §13307 allows the City to estimate the total cost of printing, handling, translating, and mailing the candidates' statements and requires each candidate filing a statement to pay in advance to the City his or her pro rata share, as estimated through the County Registrar of Voters, as a condition of having his or her statement included in the voters' pamphlet. As is customary for previous elections, it is recommended that the City Council authorize charging the candidates for the actual costs associated with candidate statements. It is also recommended that the City Council approve the 200 word limitation for candidate statements.

The Elections Code includes provisions for performing election-related tasks during regular business hours, as posted, and extending the deadline to the next regular business day if necessary. The City is on a 9/80 schedule and has a furlough closure one day a month. The relevant schedule is attached and will be posted as a part of the election notices.

**FISCAL IMPACT:** Not applicable.

**FUNDING AVAILABLE:** The anticipated cost of the November 2012 General Municipal Election is approximately \$65,000 and is budgeted for the 2012/13 fiscal year.

Respectfully submitted,

---

Randi Johl  
City Clerk



## **City of Lodi**

### **General Municipal Election Tuesday, November 6, 2012**

#### Physical Address and Telephone

City of Lodi, City Clerk's Office  
221 West Pine Street, 2<sup>nd</sup> Floor  
Lodi, California 95240  
(209) 333-6702

#### Regular Business Hours

Monday-Thursday: 7:30 a.m. – 5:30 p.m.  
Open Friday (If Applicable): 8:00 a.m. – 5:00 p.m.  
Closed Every Other Friday – 9/80 Closure  
Closed One Additional Friday – Furlough Closure

#### Relevant Closure Dates Between Call and Conduct of Election

June 6, 2012 – Call of Election  
June 15, 2012 – 9/80 Closure  
June 22, 2012 – Furlough Closure  
June 29, 2012 – 9/80 Closure  
July 4, 2012 – Holiday  
July 13, 2012 – 9/80 Closure  
July 20, 2012 – Furlough Closure  
July 27, 2012 – 9/80 Closure  
August 10, 2012 – 9/80 Closure  
August 24, 2012 – 9/80 Closure  
August 31, 2012 – Furlough Closure  
September 3, 2012 – Holiday  
September 7, 2012 – 9/80 Closure  
September 21, 2012 – 9/80 Closure  
September 28, 2012 – Furlough Closure  
October 5, 2012 – 9/80 Closure  
October 19, 2012 – 9/80 Closure  
October 26, 2012 – Furlough Closure  
November 2, 2012 – 9/80 Closure  
November 6, 2012 – Election Day



RESOLUTION NO. 2012 - \_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI, CALIFORNIA, CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD IN THE CITY ON TUESDAY, NOVEMBER 6, 2012, FOR THE ELECTION OF CERTAIN OFFICERS OF THE CITY AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES

---

WHEREAS, under the provisions of the laws relating to General Law Cities in the State of California, a General Municipal Election shall be held on Tuesday, November 6, 2012, for the election of municipal officers.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LODI, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. That, pursuant to the requirements of the laws of the State of California relating to General Law Cities within said State, there is called and ordered to be held in the City of Lodi, California, on Tuesday, November 6, 2012, a General Municipal Election for the purpose of electing the qualified two (2) members of the City Council of said City for the full term of four years.

SECTION 2. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 3. That the City Clerk of the City of Lodi is authorized, instructed, and directed to procure and furnish any and all official ballots, notices, printed matter, and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct said election.

SECTION 4. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, except as provided in §14401 of the Elections Code of the State of California.

SECTION 5. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 6. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form, and manner as required by law.

SECTION 7. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

Dated: June 6, 2012

---

I hereby certify that Resolution No. 2012 - \_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

Randi Johl  
City Clerk

2012 - \_\_\_\_

RESOLUTION NO. 2012 - \_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI, CALIFORNIA,  
REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN  
TO RENDER SPECIFIED SERVICES TO THE CITY RELATING TO THE CONDUCT OF  
A GENERAL MUNICIPAL ELECTION TO BE HELD TUESDAY, NOVEMBER 6, 2012

---

WHEREAS, a General Municipal Election is to be held in the City of Lodi,  
California, on November 6, 2012; and

WHEREAS, in the course of conduct of the election, it is necessary for the City to  
request services of the County; and

WHEREAS, all necessary expenses in performing these services shall be paid  
by the City of Lodi.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LODI,  
CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS  
FOLLOWS:

SECTION 1. That, pursuant to the provisions of §10002 of the Elections Code  
of the State of California, this City Council requests the San Joaquin County Board of  
Supervisors to permit the County Registrar of Voters' office to prepare and furnish to the  
City of Lodi all materials, equipment, and services as agreed upon by the County  
Registrar of Voters and the City Clerk for the conduct of the November 6, 2012, General  
Municipal Election.

SECTION 2. That the City shall reimburse the County for services performed  
when the work is completed and upon presentation to the City of a properly approved  
invoice.

SECTION 3. That the City Clerk is directed to forward without delay to the  
Board of Supervisors and the County Registrar of Voters' offices a certified copy of this  
resolution.

SECTION 4. That the City Clerk shall certify to the passage and adoption of this  
resolution and enter it into the book of original resolutions.

Dated: June 6, 2012

---

I hereby certify that Resolution No. 2012 - \_\_\_\_ was passed and adopted by the Lodi  
City Council in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

Randi Johl  
City Clerk

2012 - \_\_\_\_

RESOLUTION NO. 2012 - \_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI, CALIFORNIA,  
SETTING FORTH THE COUNCIL'S POLICY REGARDING IMPARTIAL  
ANALYSES, ARGUMENTS, AND REBUTTAL ARGUMENTS FOR ANY  
MEASURE(S) THAT MAY QUALIFY TO BE PLACED ON THE BALLOT  
FOR THE NOVEMBER 6, 2012, GENERAL MUNICIPAL ELECTION

---

WHEREAS, the State of California Elections Code sets forth that whenever any City measure(s) qualifies for a place on the ballot, the governing body may direct the City Elections Official to transmit a copy of the measure(s) to the City Attorney for preparation of an impartial analysis. The Elections Code further sets forth the process for receiving arguments for and against the measure(s) and for the submittal of rebuttal arguments.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi does hereby set forth the following as it pertains to any measure(s) that may qualify to be placed on the ballot for the November 6, 2012, General Municipal Election:

SECTION 1. The City Council of the City of Lodi does hereby direct the City Clerk to transmit a copy of any measure(s) that would qualify to be voted upon at the November 6, 2012, General Municipal Election to the City Attorney to prepare an impartial analysis of the measure(s), showing the effect of the measure(s) on the existing law and the operation of the measure(s).

SECTION 2. The City Council of the City of Lodi does hereby determine that written argument for or against any city measure may be submitted pursuant to the Elections Code of the State of California. No argument shall exceed 300 words in length.

SECTION 3. The City Council of the City of Lodi does hereby determine that rebuttal arguments may be submitted pursuant to the Elections Code of the State of California. Rebuttal arguments shall not exceed 250 words in length.

Dated: June 6, 2012

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I hereby certify that Resolution No. 2012 - \_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

Randi Johl  
City Clerk

2012 - \_\_\_\_

RESOLUTION NO. 2012 - \_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI, CALIFORNIA,  
ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE  
PERTAINING TO CANDIDATES STATEMENTS SUBMITTED TO THE VOTERS  
AT AN ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2012

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WHEREAS, §13307 of the Elections Code of the State of California provides that the governing body of any local agency adopt regulations pertaining to materials prepared by any candidate for a municipal election, including costs of the candidates statement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LODI, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. GENERAL PROVISIONS. That pursuant to §13307 of the Elections Code of the State of California, each candidate for elective office to be voted for at an Election to be held in the City of Lodi on November 6, 2012, may prepare a candidate's statement on an appropriate form provided by the City Clerk. The statement may include the name, age, and occupation of the candidate and a brief description of no more than 200 words of the candidate's education and qualifications expressed by the candidate himself or herself. The statement shall not include party affiliation of the candidate, nor membership or activity in partisan political organizations. The statement shall be filed in the office of the City Clerk at the time the candidate's nomination papers are filed. The statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5:00 p.m. of the next working day after the close of the nomination period.

SECTION 2. FOREIGN LANGUAGE POLICY.

- A. Pursuant to the Federal Voting Rights Act, the City Clerk shall have all candidates statements translated into Spanish.
- B. Pursuant to State law, the candidate's statement must be translated and printed (in the voters pamphlet) in any language at the candidates request.
- C. The City Clerk shall:
  - 1. Translations:
    - (a) have all candidates statements translated into the language specified in (a) above.
    - (b) have translated those statements into the languages as requested by the candidate in (b) above.
  - 2. Printing:
    - (a) print any translations of candidates who so request printing in the voters pamphlet.

SECTION 3. PAYMENT.

- A. Translations:
  - 1. The candidate shall be required to pay for the cost of translating the candidates statement into any required foreign language as specified in (a) and/or (b) above pursuant to Federal and/or State law.

2. The candidate shall be required to pay for the cost of translating the candidate's statement into any foreign language that is not required as specified in (a) and/or (b) of Section 2 above, pursuant to Federal and/or State law, but is requested as an option by the candidate.

B. Printing:

1. The candidate shall be required to pay for the cost of printing the candidate's statement in English in the voters' pamphlet.
2. The candidate shall be required to pay for the cost of printing the candidate's statement in a foreign language in the voters' pamphlet.

The City Clerk shall estimate the total cost of printing, handling, translating, and mailing the candidate's statements filed pursuant to this section, including costs incurred as a result of complying with the Voting Rights Act of 1965 (as amended), and require each candidate filing a statement to pay in advance to the local agency his or her estimated pro rata share as a condition of having his or her statement included in the voters' pamphlet. In the event the estimated payment is required, the estimate is just an approximation of the actual cost that varies from one election to another election and may be significantly more or less than the estimate, depending on the actual number of candidates filing statements. Accordingly, the City Clerk is not bound by the estimate and may, on a pro rata basis, bill the candidate for additional actual expense or refund any excess paid depending on the final actual cost. In the event of underpayment, the City Clerk may require the candidate to pay the balance of the cost incurred. In the event of overpayment, the City Clerk shall prorate the excess amount among the candidates and refund the excess amount paid within 30 days of the election.

SECTION 4. ADDITIONAL MATERIALS. No candidate will be permitted to include additional materials in the sample ballot package.

SECTION 5. That the City Clerk shall provide each candidate or the candidate's representative a copy of this resolution at the time nominating petitions are issued.

SECTION 6. That this resolution shall apply only to the election to be held on November 4, 2008, and shall then be repealed.

SECTION 7. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

Dated: June 6, 2012

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I hereby certify that Resolution No. 2012 - \_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –  
NOES: COUNCIL MEMBERS –  
ABSENT: COUNCIL MEMBERS –  
ABSTAIN: COUNCIL MEMBERS –

Randi Johl  
City Clerk

2012 - \_\_\_\_

**Comments by the public on non-agenda items**

**THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.**

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

**Comments by the City Council Members on non-agenda items**



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Re-post for Vacancies on the Greater Lodi Area Youth Commission

**MEETING DATE:** June 6, 2012

**PREPARED BY:** City Clerk

---

**RECOMMENDED ACTION:** Direct the City Clerk to re-post for vacancies on the Greater Lodi Area Youth Commission.

**BACKGROUND INFORMATION:** At its April 4, 2012 meeting, the City Council directed the City Clerk to post for vacancies on the Greater Lodi Area Youth Commission. Due to the fact that too few were applications received, it is recommended that the following vacancies be re-posted for another 15-day period.

**Greater Lodi Area Youth Commission**

Adult Advisors:

Elizabeth Mazzeo	Term to expire May 31, 2012
Jeffrey Palmquist	Term to expire May 31, 2012
Summer Pennino	Term to expire May 31, 2012

Student Members:

Tyler Bartlam	Term to expire May 31, 2012
Carson Kautz	Term to expire May 31, 2012
Alex Maldonado	Term to expire May 31, 2012
Kelley McConahey	Term to expire May 31, 2012
Allison Schatz	Term to expire May 31, 2012
Dipa Patel	Term to expire May 31, 2013
Kinsey Green	Term to expire May 31, 2013

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** None required.

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Randi Johl  
City Clerk

RJ/JMR

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, Interim City Manager





## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt Resolution Approving the City of Lodi Financial Plan and Budget for the Fiscal Year Beginning July 1, 2012 and Ending June 30, 2013 and Approving the Fiscal Year 2012/13 Appropriation Spending Limit

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Deputy City Manager

---

**RECOMMENDED ACTION:** Adopt resolution approving the City of Lodi Financial Plan and Budget for the Fiscal Year (FY) beginning July 1, 2012 and ending June 30, 2013 and approving the Fiscal Year 2012/13 appropriation spending limit.

**BACKGROUND INFORMATION:** The City Council will continue to receive the budget presentation and the public is invited to comment on the FY 2012/13 budget. Council has previously received information on this budget at Shirtsleeve meetings on May 1, 8, 15 and 22. A draft budget document was released on May 17.

The General Fund Budget for FY 2012/13 is balanced without the use of reserves. Council approved a General Fund Reserve Policy in June 2010 that sets aside 8 percent of General Fund revenues for a Catastrophic Reserve and 8 percent of General Fund revenues for an Economic Reserve. Total General Fund reserves are projected to be \$3.96 million. This level of reserve will fully fund the Catastrophic Reserve at a level of \$3.3 million and partially fund the Economic Reserve at about \$660,000.

The General Fund budget is \$41,909,940, an increase of \$654,600 over the prior year. The All-Funds budget is \$176,227,820, a decrease of \$33.5 million, or about 16 percent from the previous year. The bulk of this decrease is related to the appropriations for the Water Treatment Plant project.

### **Significant Issues**

This budget is not without a number of significant issues that the City addressed in developing a balanced budget.

The City has been operating under annual concession agreements with all of its bargaining units. While concession agreements have allowed the City to meet its budgetary requirements, such concession agreements are not conducive to long-term planning. Of the City's nine bargaining units, eight had labor agreements that expired during FY 2011/12. The City has negotiated agreements with all but two of the eight units, along with modifying the benefits for Executive, Council Appointees and Confidential employees. The City has not reached agreements with the Police Officers Association or the Dispatchers Association. The only bargaining unit whose agreement did not expire during FY 2011/12 was the International Brotherhood of Electrical Workers (IBEW). That agreement will expire on December 31, 2013.

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

Each of the completed agreements addressed three fundamental issues for the City: capping medical costs, employees paying their share of retirement costs and establishing a second-tier retirement system.

Some bargaining units had agreed to an employer paid medical cap as a concession and continued with the medical cap in their successor agreement. Other bargaining units have agreed to cap medical costs at the January 2012 rate effective January 2013.

Prior to FY 2011/12, the City paid 100 percent of the employee share of retirement cost. As a concession for FY 2011/12, each bargaining group had agreed to pay a portion of the employee share of retirement cost. Negotiated successor agreements include the employees paying their full share of retirement cost over the term of the agreement.

Finally, the City sought, and the bargaining groups have agreed, to establish a second-tier retirement system. For Safety personnel, the second tier will be based upon a 3% @ 55 formula, with final compensation based upon the highest 36 months compensation. This compares to the current formula of 3% @ 50, with final compensation based upon single highest year compensation. For Miscellaneous personnel, the second tier will be based upon a 2% @ 60 formula, as compared to the current formula of 2% @ 55.

The cumulative savings associated with the negotiated agreements for FY 2012/13 is about \$1.5 million.

Negotiations continue with the Police Officers Association and the Dispatchers Association. We have had positive discussions with both groups, but have not come to agreement on all terms for successor contracts.

As a concession for FY 2011/12, the Police Officers Association agreed to un-fund two Officer positions and the Dispatchers Association agreed to un-fund one Dispatcher/Jailer position. The budget, as drafted, continues to un-fund these concession positions along with un-funding one additional Officer position.

Further, due to funding constraints within the Police Department, two additional positions are un-funded for FY 2012/13: one Assistant Animal Control Officer and one Police Records Clerk.

All told, six positions are unfunded within the Police Department to allow for a balanced budget. All six positions are vacant.

As agreements are reached with these two bargaining units, any savings is expected to be applied to funding the positions or vehicle replacements that were un-funded to balance the budget.

New positions recommended by the City Manager are an Electric Engineering Manager and a Field Services Representative in Electric Utility and an Associate Engineer in Public Works.

One change to note between the draft and final budget relates to the Water Utility. The draft budget did not include funding for a part-time Treatment Plant Operator position for plant start-up. The additional cost of \$50,000 for the temporary position is included in the attached resolution.

Significant capital projects included in the budget include:

- Surface Water Treatment Plant (\$6 million - bond funded)
  - Completion of construction of a treatment plant and appurtenances for treating Mokelumne River water
- Street Resurfacing (\$1.25 million - gas tax funded)
  - Resurface portion of Ham Lane and Mills Avenue
- Water Meter Installation (\$1.2 million - rate funded)
  - Continuing design and construction of the meter installation program

- Transit Security Equipment (\$478,000 - ARRA and Prop. 1B funded)
  - Design and install camera system for the Lodi Transit Facility
- Transit Shop Solar Project (\$400,000 - ARRA funded)
  - Construct ancillary structure and install solar panels for maintenance shop

A resolution adopting the Financial Plan and Budget is attached. Included in the budget resolution is the adoption of the Appropriation Spending Limit for the 2012/13 fiscal year. This limit represents the maximum spending authority for the City based upon population and inflation changes over the last year. The 2012/13 Appropriation Limit is \$81,450,625, an increase of \$3,558,896 from the prior year. Details of the calculations are attached as Attachment 1 and Exhibits A through G.

**FISCAL IMPACT:** The 2012/13 budget provides an expenditure plan for all funds. The All-Funds budget is \$176,227,820, a decrease of \$33.5 million, or about 16 percent from the previous year. The bulk of this decrease is related to the appropriations for the Water Treatment Plant project. The General Fund Budget is \$41,909,940, an increase of \$654,600 over the prior year's budget.

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Jordan Ayers, Deputy City Manager

Attachments

**2012-13 FINANCIAL PLAN AND BUDGET****APPROPRIATIONS SPENDING LIMIT****2012-13 APPROPRIATIONS SPENDING LIMIT**

				AMOUNT
Last Year's Limit				77,891,729
Adjustment Factors				
1	Population %	1.0077		
2	Inflation %	1.0377		
Total Adjustment %				1.04569
Annual Adjustment				3,558,896
Adjustments				None
Total Adjustments				3,558,896
2012-13 APPROPRIATIONS SPENDING LIMIT				81,450,625

**2012-13 APPROPRIATIONS SUBJECT TO LIMITATION**

		AMOUNT
PROCEEDS OF TAXES		31,470,842
EXCLUSIONS		-
APPROPRIATIONS SUBJECT TO LIMITATION		31,470,842
CURRENT YEAR LIMIT		81,450,625
OVER(UNDER) LIMIT		(49,979,782)

## EXHIBIT A

City of Lodi  
 Appropriations Spending Limit  
 Fiscal Year 2012-13

		Amount	Source
<b>A. Last Year's Limit</b>		77,891,729	
<b>B. Adjustments Factors</b>			
	1      Population %	1.0077	(Exhibit B)
	2      Inflation %	1.0377	(State Finance)
<b>Total Adjustment %</b>		1.04569	(B1*B2)
<b>C. Annual Adjustment</b>		3,558,896	(B*A)
<b>D. Other Adjustments</b>		None	
<b>E. Total Adjustments</b>		3,558,896	(C+D)
<b>F. This Year's Limit</b>		81,450,625	(A+E)

City of Lodi  
Appropriations Spending Limit  
Growth Factors/Calculations

EXHIBIT B

GROWTH FACTORS:		%Increase	
Fiscal Year	Per Capita Income	City Population	County Population
87-88	3.47	5.72	3.33
88-89	4.66	4.96	3.32
89-90	5.19	2.52	2.20
90-91	4.21	2.26	2.23
91-92	4.14	1.19	2.64
92-93	-0.64	0.97	2.41
93-94	2.72	0.73	2.13
94-95	0.71	0.51	1.57
95-96	4.72	1.31	1.59
96-97	4.67	1.68	1.85
97-98	4.67	0.70	1.21
98-99	4.15	1.16	1.47
99-00	4.53	1.94	1.44
00-01	4.91	1.29	1.78
01-02	7.82	1.90	2.71
02-03	-1.27	2.14	3.07
03-04	2.31	1.69	2.86
04-05	3.28	0.75	2.54
05-06	5.26	0.96	2.65
06-07	3.96	0.30	2.00
07-08	4.42	0.90	1.73
08-09	4.29	0.68	1.59
09-10	0.62	0.42	1.07
10-11	-2.54	0.61	0.97
11-12	2.51	0.61	0.97
12-13	3.77	0.77	1.05

CALCULATIONS:			
Fiscal Year	Calculation		Appropriation Spending Limit
87-88	1.0347 x 1.0572 = 1.0939 1.0939 x \$22,654,787	=	\$24,782,072
88-89	1.0466x1.0496=1.0985 1.0985 x \$24,782,072	=	\$27,223,106
89-90	1.0519 x 1.0252 = 1.0784 1.0784 x \$27,223,106	=	\$29,357,398

90-91	1.0421 x 1.0226 = 1.0657 1.0657 x \$29,357,398	=	\$31,286,179
91-92	1.0414 x 1.0264 = 1.0689 1.0689 x \$31,286,179	=	\$33,441,797
92-93	.9936 x 1.0241 = 1.0175 1.0175 x 33,441,797	=	\$34,027,028
93-94	1.0272 x 1.0213 = 1.0491 1.0491 x 34,027,028	=	\$35,697,755
94-95	1.0071 x 1.0157 = 1.0229 1.0229 x 35,697,755	=	\$36,515,234
95-96	1.0472 x 1.0131 = 1.0609 1.0609 x 36,515,234	=	\$38,739,012
96-97	1.0467 x 1.0168 = 1.0643 1.0643 x 38,739,012	=	\$41,229,332
97-98	1.0467 x 1.0070 = 1.0540 1.0540 x 41,229,332	=	\$43,456,825
98-99	1.0415 x 1.0116 = 1.0536 1.0536 x 43,456,825		\$45,785,303
99-00	1.0453 x 1.0194 = 1.0656 1.0656 x 45,785,303		\$48,787,849
00-01	1.0491 x 1.0129 = 1.0626 1.0626 x 48,787,849		\$51,843,597
01-02	1.0782 x 1.0190 = 1.0987 1.0986858		\$56,959,824
02-03	.9873 x 1.0214 = 1.00843 1.00842822		\$57,439,894
03-04	1.0231 x 1.0169 = 1.0404 1.04039039		\$59,759,913
04-05	1.0328 x 1.0075 = 1.040546 1.040546		\$62,182,939
05-06	1.0526 x 1.0096 = 1.06270496 1.06270496		\$66,082,118
06-07	1.0396 x 1.0030 = 1.0427188 1.0427188		\$68,905,066
07-08	1.0442 x 1.0090 = 1.0535978 1.0535978		\$72,598,226
08-09	1.0429 x 1.0068 = 1.0499917 1.0499917		\$76,227,535
09-10	1.0062 x 1.0042 = 1.01042604 1.01042604		\$77,022,286
10-11	.9746 x 1.0061 = .98054506 0.98054506		\$75,523,822
11-12	1.0251 x 1.0061 = 1.03135311 1.03135311		\$77,891,729
12-13	1.0377 x 1.0077 = 1.04569029 1.04569029		\$81,450,625
12-13 Appropriations Subject to Limit:			
	<u>\$31,470,842</u> \$81,450,625	=	38.64%

## EXHIBIT C

## APPROPRIATIONS SUBJECT TO LIMITATION

City of Lodi  
Fiscal Year 2012-13

	AMOUNT	SOURCE
A. PROCEEDS OF TAXES	31,470,842	(Exhibit F)
B. EXCLUSIONS	0	(Exhibit D)
C. APPROPRIATIONS SUBJECT TO LIMITATION	31,470,842	(A-B)
D. CURRENT YEAR LIMIT	81,450,625	(Exhibit A)
E. OVER(UNDER) LIMIT	(49,979,782)	(C-D)

$$\frac{31,470,842}{81,450,625} = 38.64\%$$



**EXHIBIT D****EXCLUDED APPROPRIATIONS**

City of Lodi  
Fiscal Year 2012-13

CATEGORY		Amount
COURT ORDERS		
	Subtotal	None
FEDERAL MANDATES		
	Subtotal	None
QUALIFIED CAPITAL OUTLAYS		
	Subtotal	None
QUALIFIED DEBT SERVICE		
	Subtotal	None
TOTAL EXCLUDABLE		None

(Copy to Exhibit C & G)

**City of Lodi**  
**Schedule to Match User Fees to Costs**  
**Fiscal Year 2012-13**

**EXHIBIT E**

	<b>User Fee Collections</b>	<b>Cost Associated With User Fees</b>	<b>Amount in Excess of User fees</b>
<b>Public Safety Fees</b>	<b>361,490</b>	<b>26,473,560</b>	<b>0</b>
<b>Parks and Rec/Cultural Fees</b>	<b>1,504,410</b>	<b>5,823,440</b>	<b>0</b>
<b>Community Development Fees</b>	<b>393,970</b>	<b>1,166,550</b>	<b>0</b>
<b>PW Engineering Fees</b>	<b>154,960</b>	<b>730,220</b>	<b>0</b>
<b>Library Fees</b>	<b>42,000</b>	<b>1,420,530</b>	<b>0</b>
<b>Total</b>	<b><u>2,456,830</u></b>	<b><u>35,614,300</u></b>	<b><u>0</u></b>

## EXHIBIT F

## Calculation - Proceeds of Taxes

City of Lodi  
Fiscal Year 2012-13

REVENUE	PROCEEDS OF TAXES	NON-PROCEEDS OF TAXES	TOTAL
<b>TAXES:</b>			
Property Taxes	7,850,100		7,850,100
Sales & Use Tax	8,880,440	279,780	9,160,220
Business License Tax	1,414,900		1,414,900
Franchise Tax	1,714,480		1,714,480
Transient Occupancy Tax	433,200		433,200
Real Property -Documentary Tax	98,900		98,900
In-Lieu Franchise Tax	6,976,670		6,976,670
<b>FROM STATE</b>			
Motor Vehicle In Lieu	4,067,830		4,067,830
State H-way Maintenance		11,400	11,400
Gas Tax		1,567,700	1,567,700
Cigarette tax		0	0
Transportation Development Act		1,645,200	1,645,200
TDA -Pedestrian/Bike Path		39,200	39,200
SB 300 Transportation Partnership		0	0
Measure K Funds		800,000	800,000
State Reimbursements-POST		35,000	35,000
Public Library grants		10,000	10,000
PERS Rebate		0	0
SB90 Reimbursements		50,000	50,000
Asset Seizure Funds/Auto Theft		0	0
Drug Suppression Grant		301,410	301,410
State special grants		246,900	246,900
Traffic Congestion Relief		0	0
State STIP reimbursement		0	0
<b>LOCALLY RAISED</b>			
Fines, Forfeitures, Penalties		1,274,100	1,274,100
Licenses and permits		626,610	626,610
Rent of City Property		832,350	832,350
Development Fees		543,400	543,400
<b>USER FEES</b>			
(from Exhibit E)	0	2,456,830	2,456,830
<b>OTHER MISCELLANEOUS</b>			
Sale of Property		3,500	3,500
Restitution-Damage to Property		500	500
Other revenue		1,720,730	1,720,730
<b>Interfund Transfers</b>		5,432,990	5,432,990
<b>SUB-TOTAL</b>	31,436,520	17,877,600	49,314,120
(for Exhibit G)			
<b>INTEREST EARNINGS</b>	34,322	19,518	53,840
(from Exhibit G)			
<b>TOTAL REVENUE</b>	31,470,842	17,897,118	49,367,960
(use for Exhibit C)			
<b>RESERVE WITHDRAWALS</b>			0
(Including appropriated Fund Balance)			
<b>TOTAL OF THESE FUNDS</b>			49,367,960
<b>OTHER FUNDS NOT INCLUDED</b>			124,309,680
<b>GRAND TOTAL BUDGET</b>			173,677,640

## EXHIBIT G

Interest Earnings  
Produced by TaxesCity of Lodi  
Fiscal Year 2012-13

	AMOUNT	SOURCE
A. NON-INTEREST TAX PROCEEDS	31,436,520	^(Exhibit F)
B. MINUS EXCLUSIONS	0	(Exhibit D)
C. NET INVESTED TAXES	31,436,520	(A-B)
D. TOTAL NON-INTEREST BUDGET	49,314,120	^(Exhibit F)
E. TAX PROCEEDS AS PERCENT OF BUDGET	63.75%	(C/D)
F. INTEREST EARNINGS	53,840	
G. AMOUNT OF INTEREST EARNED FROM TAXES	34,322	(E*F)
H. AMOUNT OF INTEREST EARNED ON NON-TAXES	19,518	(F-G)
I. Take the result of steps #G & H Copy on to Exhibit F		

RESOLUTION NO. 2012-\_\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
ADOPTING THE CITY OF LODI FINANCIAL PLAN AND  
BUDGET FOR THE FISCAL YEAR BEGINNING JULY 1,  
2012 AND ENDING JUNE 30, 2013, AND APPROVING  
THE 2012/13 APPROPRIATIONS SPENDING LIMIT

=====

WHEREAS, the City Manager submitted the 2012/13 balanced Financial Plan and Budget to the City Council on May 17, 2012; and

WHEREAS, the 2012/13 Financial Plan and Budget was prepared in accordance with the City Council's goals, budget assumptions, and policies; and

WHEREAS, the City Council conducted public budget meetings on May 1, May 8, May 15, May 22, and June 6, 2012, at the Carnegie Forum; and

WHEREAS, the City Council is required to adopt the Appropriations Spending Limit for 2012/13; and

WHEREAS, the Appropriations Spending Limit and the annual adjustment factors selected to calculate the Limit are part of the Financial Plan and Budget.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi as follows:

1. That the 2012/13 Financial Plan and Budget, as proposed by the City Manager, be approved as follows:

	<b>Budget</b>
<b>General Fund</b>	
Police	\$16,891,930
Fire	\$9,581,630
Public Works	\$1,570,400
City Clerk	\$585,340
City Manager	\$418,040
City Attorney	\$466,730
Internal Services	\$3,374,420
Economic Development	\$618,690
Non-Departmental	\$8,402,760
<b>Total General Fund</b>	<b>\$41,909,940</b>
<b>Other Funds</b>	
Electric Utility	\$68,827,180
Water Utility	\$18,853,250
Wastewater Utility	\$13,701,870
Transit	\$4,690,760
Streets	\$3,857,690
Community Development	\$1,166,550

Parks, Rec & Cultural Services	\$5,823,440
Library	\$1,420,530
Transportation Development Act	\$55,000
Community Dev Block Grant	\$889,540
Public Safety Special Revenue	\$337,580
Capital Outlay	\$739,700
Equip & Vehicle Replacement	\$368,500
Debt Service	\$1,667,910
Benefits	\$7,565,160
Self Insurance	\$2,251,000
Trust and Agency	\$283,000
Fleet Services	\$1,819,220
<b>Total Other Funds</b>	<b>\$134,317,880</b>
<b>Total</b>	<b>\$176,227,820</b>

2. That the funds for the 2012/13 Financial Plan and Budget are appropriated as summarized in the document on file in the City Clerk's Office; and
3. That the Appropriations Spending Limit be increased by \$3,558,896 from the 2011/12 level of \$77,891,729 to the 2012/13 level of \$81,450,625.

Dated: June 6, 2012

=====

I hereby certify that Resolution No. 2012-\_\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following votes:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2012-\_\_\_\_\_



## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Authorize Request for Use of City Letterhead Pursuant to City Council Protocol Manual Section 7.4 and Government Code Section 82015

**MEETING DATE:** June 6, 2012

**PREPARED BY:** City Clerk

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**RECOMMENDED ACTION:** Authorize request for use of City letterhead pursuant to City Council Protocol Manual Section 7.4 and Government Code Section 82015.

**BACKGROUND INFORMATION:** The City received a request for use of the City letterhead through Council Member Johnson on May 17, 2012 with respect to creating a marketing portfolio to be used for fundraising purposes for the Grape Bowl.

As you are aware, City Council Protocol Manual Section 7.4 states Council Member correspondence written with City resources (i.e., letterhead, staff support, postage, etc.) will reflect a majority position of the Council and be copied to the full Council.

In addition, pursuant to the Fair Political Practices Commission (FPPC) Regulations, the Political Reform Act and Government Code Section 82015(b)(2)(B)(iii), an elected official is required to disclose payments made at their behest for legislative, governmental or charitable purposes when the payment meets or exceeds \$5,000 from a single source in a calendar year. When such a payment is made, the elected official must file Form 803 with the local elections official within 30 days of the date the behested payment is made. Upon receipt, the City Clerk is required to post Form 803 on the City's website.

Section 7.4 of the Protocol Manual, Government Code Section 82015(b)(2)(B)(iii) and Form 803 are attached for reference purposes.

It is recommended that the City Council authorize the aforementioned usage of the City's letterhead if so desired.

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** Not applicable.

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Randi Johl  
City Clerk

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

## **City Council Protocol Manual**

### **7.4 Use of City Letterhead or City Seal**

All Council Member correspondence written on City resources, i.e. letterhead, staff support, postage, etc., will reflect a majority position of the Council, not individual Council Members' positions. All Council Member correspondence using City resources shall be copied to the full Council. The City Clerk is the custodian of the Official City Seal pursuant to Lodi Municipal Code 2.13.010. The City Seal shall not be altered and is to be used only on official City documents.

## **California Government Code**

82015.

...

(b) (1) A payment made at the behest of a committee as defined in subdivision (a) of Section 82013 is a contribution to the committee unless full and adequate consideration is received from the committee for making the payment.

(2) A payment made at the behest of a candidate is a contribution to the candidate unless the criteria in either subparagraph (A) or (B) are satisfied:

...

(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate's candidacy for elective office:

...

(iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution. However, payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the elected officer with the elected officer's agency and shall be a public record subject to inspection and copying pursuant to subdivision (a) of Section 81008. The report shall contain the following information: name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made. Once the five-thousand-dollar (\$5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies shall forward a copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements.



# Behested Payment Report

# A Public Document

Behested Payment Report

<b>1. Elected Officer or CPUC Member</b> (Last name, First name)		Date Stamp	<b>California Form 803</b> For Official Use Only
Agency Name			
Agency Street Address			
Designated Contact Person (Name and title, if different)		<input type="checkbox"/> Amendment (See Part 5)  Date of Original Filing: _____ (month, day, year)	
Area Code/Phone Number	E-mail (Optional)		

## 2. Payor Information (For additional payors, include an attachment with the names and addresses.)

Name			
Address	City	State	Zip Code

## 3. Payee Information (For additional payees, include an attachment with the names and addresses.)

Name			
Address	City	State	Zip Code

## 4. Payment Information (Complete all information.)

Date of Payment: \_\_\_\_\_ (month, day, year)     
 Amount of Payment: (In-Kind FMV) \$ \_\_\_\_\_ (Round to whole dollars.)

Payment Type:     
☐ Monetary Donation     
 or     
☐ In-Kind Goods or Services (Provide description below.)

Brief Description of In-Kind Payment: \_\_\_\_\_

Purpose: (Check one and provide description below.)     
☐ Legislative     
☐ Governmental     
☐ Charitable

Describe the legislative, governmental, charitable purpose, or event: \_\_\_\_\_

## 5. Amendment Description or Comments


## 6. Verification

I certify, under penalty of perjury under the laws of the State of California, that to the best of my knowledge, the information contained herein is true and complete.

Executed on \_\_\_\_\_ DATE     
 By \_\_\_\_\_ SIGNATURE OF ELECTED OFFICER OR CPUC MEMBER

Clear Form

Print Form

**Behested Payment Report****A Public Document**

This report is for use by elected officers and members of the California Public Utilities Commission (CPUC) to disclose payments made at their behest, principally for legislative, governmental, or charitable purposes. This form was prepared by the Fair Political Practices Commission (FPPC) and is available at [www.fppc.ca.gov](http://www.fppc.ca.gov).

**When to File**

File Form 803 within 30 days following the date on which the payment(s) meets or exceeds five thousand dollars (\$5,000) in the aggregate from a single source in a calendar year. Once a single source has made a behested payment of \$5,000 or more during the calendar year, subsequent payments of any amount from that source must be reported.

**Where to File**

**State Officials:** The official's state agency must receive Form 803 within 30 days of the date the behested payment is made. Within 30 days after receipt of the report, the state agency must forward a copy to the Fair Political Practices Commission (FPPC) 428 J Street, Suite 620, Sacramento, CA 95814.  
Fax: 916-322-0886 E-mail: [Form803@fppc.ca.gov](mailto:Form803@fppc.ca.gov)

**Local Officials:** The official's local agency must receive Form 803 within 30 days of the date the behested payment is made. Within 30 days after receipt of the report, the agency must forward a copy to the filing officer who receives the official's original campaign statements.

**General Information:** Behested payments are payments made principally for legislative, governmental, or charitable purposes under Government Code Section 82015(b)(2)(B)(iii). These payments are not for personal or campaign purposes. Generally, a donation is made at the behest if it is requested, solicited, or suggested by the official, or otherwise made to a person in cooperation, consultation, coordination with, or at the consent of, the elected officer or CPUC member. This includes payments behested by the official or by his or her agent or employee on the official's behalf.

**Privacy Information Notice:** Information requested by the FPPC is required by and used to administer and enforce the Political Reform Act. Failure to provide information may be a violation subject to administrative, criminal, or civil penalties. All reports and statements are public records available for inspection and reproduction. If you have any question regarding this notice, please contact General Counsel at 428 J Street, Suite 620, Sacramento, CA 95814 or (916) 322-5660.

**Instructions**

**Part 1: Identification:** Identify the official's name, agency, address, and contact information. Mark the amendment box if changing information on a previously filed Form 803 and include the date of the original filing.

**Part 2: Payor Information:** Disclose the name and address of the person making the payment. A business address is acceptable.

**Part 3: Payee Information:** Identify the name and address of the person receiving the payment, if applicable. A business address is acceptable.

**Part 4: Payment Information:** Disclose the payment date and amount using the fair market value (FMV) for donated in-kind goods or services. Check one box to identify the type of payment and provide a description if the payment is an in-kind good or service. Check one box to identify the purpose and provide a description. Use Part 5 for additional or clarifying information.

**Part 5: Amendment Description or Comments:** Complete this section if amending a previously filed Form 803 or to provide additional information.

**Part 6: Verification:** Date and sign the form under penalty of perjury.

**Example**

On April 24, 2010, at CPUC Member Tully's request, the ABC Corporation made a monetary donation of \$5,000 to the Boys and Girls Club.

<b>2. Payor Information</b> (For additional payors, include an attachment with the names and addresses.)			
ABC Corporation			
Name			
1234 Alpha Ave.,	Sacramento	CA	95814
Address	City	State	Zip Code
<b>3. Payee Information</b> (For additional payees, include an attachment with the names and addresses.)			
The Boys and Girls Club			
Name			
5678 Bravo Blvd.,	Sacramento	CA	95814
Address	City	State	Zip Code
<b>4. Payment Information</b> (Complete all information.)			
Date of Payment:	April 24, 2010 (month, day, year)	Amount of Payment: (In-Kind FMV)	\$ 5,000 (Round to whole dollars)
Payment Type:	<input checked="" type="checkbox"/> Monetary Donation    or <input type="checkbox"/> In-Kind Goods or Services (Provide description below)		
Brief Description of In-Kind Payment: _____			
Purpose: (Check one and provide description below.) <input type="checkbox"/> Legislative <input type="checkbox"/> Governmental <input checked="" type="checkbox"/> Charitable			
Describe the legislative, governmental, charitable purpose, or event: Donation to children's community service organization.			



## **CITY OF LODI COUNCIL COMMUNICATION**

**AGENDA TITLE:** Ordinance No. 1859 Entitled, "An Ordinance of the Lodi City Council Amending Lodi Municipal Code Chapter 10.12 – Enforcement and Obedience to Traffic Regulations – by Repealing and Re-Enacting Section 10.12.020, 'Required Obedience to Traffic Regulations,' in its Entirety"

**MEETING DATE:** June 6, 2012

**PREPARED BY:** City Clerk

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**RECOMMENDED ACTION:** Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1859.

**BACKGROUND INFORMATION:** Ordinance No. 1859 entitled, "An Ordinance of the Lodi City Council Amending Lodi Municipal Code Chapter 10.12 – Enforcement and Obedience to Traffic Regulations – by Repealing and Re-Enacting Section 10.12.020, 'Required Obedience to Traffic Regulations,' in Its Entirety," was introduced at the regular City Council meeting of May 16, 2012.

**ADOPTION:** With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required – one to introduce and a second to adopt the ordinance. Ordinances may only be passed at a regular meeting or at an adjourned regular meeting; except for urgency ordinances, ordinances may not be passed at a special meeting. Id. All ordinances must be read in full either at the time of introduction or at the time of passage, unless a regular motion waiving further reading is adopted by a majority of all council persons present. **Cal. Gov't Code § 36934.**

Ordinances take effect 30 days after their final passage. **Cal. Gov't Code § 36937.**  
This ordinance has been approved as to form by the City Attorney.

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** None required.

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Randi Johl  
City Clerk

RJ/jmr

Attachment

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**APPROVED:** \_\_\_\_\_  
Konradt Bartlam, City Manager

ORDINANCE NO. 1859

AN ORDINANCE OF THE LODI CITY COUNCIL  
AMENDING LODI MUNICIPAL CODE CHAPTER 10.12 –  
ENFORCEMENT AND OBEDIENCE TO TRAFFIC  
REGULATIONS – BY REPEALING AND RE-ENACTING  
SECTION 10.12.020, “REQUIRED OBEDIENCE TO  
TRAFFIC REGULATIONS,” IN ITS ENTIRETY

=====

BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Lodi Municipal Code Chapter 10.12 – Enforcement and Obedience to Traffic Regulations – is hereby amended by repealing and reenacting §10.12.020, “Required Obedience to Traffic Regulations,” in its entirety to read as follows:

Except as preempted by Vehicle Code §21 regarding State law established violations, it shall be unlawful for any person to violate the traffic regulations as promulgated by this title or to fail to obey any device erected or maintained pursuant to this title or the traffic resolution. (Vehicle Code §21461 et seq.).

SECTION 2. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 5. This ordinance shall be published pursuant to law and shall become effective 30 days from the date of passage and adoption.

Approved this 6<sup>th</sup> day of June, 2012

\_\_\_\_\_  
JOANNE MOUNCE  
Mayor

ATTEST:

RANDI JOHL  
City Clerk

State of California  
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1859 was introduced at a regular meeting of the City Council of the City of Lodi held May 16, 2012, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. 1859 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL  
City Clerk

APPROVED TO FORM:

D. STEPHEN SCHWABAUER  
City Attorney